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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law # <i>99-174</i>	Sec. #	LOF cite
Prime Bill # <i>HR 421</i>	Comp./Sim. Bills <i>SB 54, SB 902, SB 2188, HB 485, HB 381</i>	
JLHC Hist. Cites	Senate House	Comms. of Ref. Senate House

COMMITTEE RECORDS					
H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
			<input type="checkbox"/> continued on reverse		

Senate/House Journals					
Page #	?	Date	Page #	?	Date

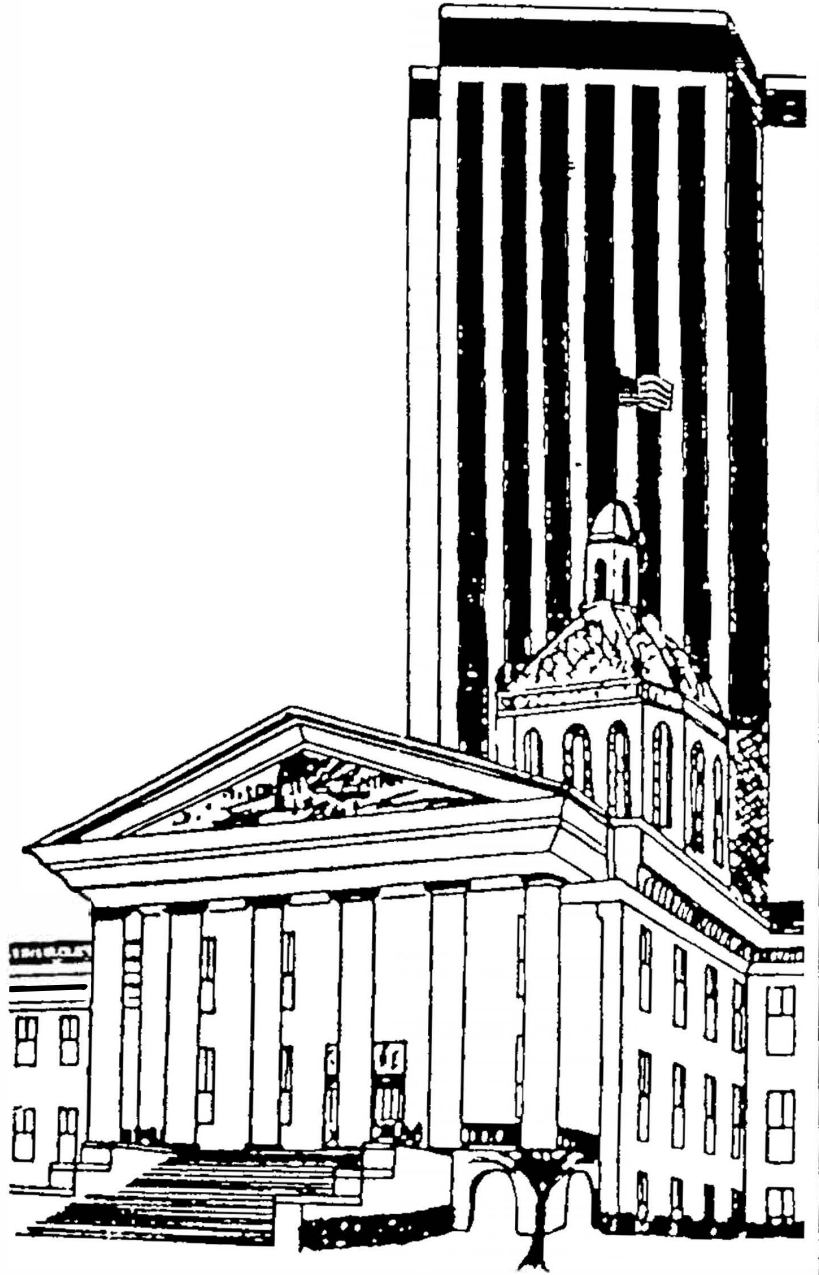
Committee/Floor Tapes					
H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

Other Documentation	
Record Series Title, folder title, etc.	Location Cite

FLORIDA LEGISLATURE

FINAL LEGISLATIVE BILL INFORMATION “CITATOR”

1999 Regular Session



prepared by:

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HISTORY OF SENATE BILLS

S 50 (CONTINUED)

- 11/10/98 SENATE Referred to Regulated Industries
- 03/02/99 SENATE Introduced, referred to Regulated Industries -SJ 00019
- 04/30/99 SENATE Died in Committee on Regulated Industries

S 52 GENERAL BILL by Grant

- Public Property/Ten Commandments, authorizes display of Ten Commandments on public property Effective Date Upon becoming law
- 09/02/98 SENATE Prefiled
 - 11/10/98 SENATE Referred to Governmental Oversight and Productivity
 - 03/02/99 SENATE Introduced, referred to Governmental Oversight and Productivity -SJ 00019
 - 04/30/99 SENATE Died in Committee on Governmental Oversight and Productivity

S 54 GENERAL BILL/CS by Criminal Justice; Lee; Silver (Similar H 0485, Compare CS/H 0421, S 0902, CS/S 2188)

- Criminal Law (THIS BILL COMBINES S54,902) prohibits consideration of evidence of defendant's voluntary intoxication to determine existence of mental state that is element of crime, requires that enhanced penalty be imposed if victim of felony is related by lineal consanguinity to defendant or is defendant's legal guardian Creates 90 4051, 775 0852 Effective Date 07/01/1999
- 09/04/98 SENATE Prefiled
 - 11/10/98 SENATE Referred to Criminal Justice, Fiscal Policy
 - 03/02/99 SENATE Introduced, referred to Criminal Justice, Fiscal Policy -SJ 00019, On Committee agenda--Criminal Justice, 03/03/99, 10 45 am, Room--37S
 - 03/03/99 SENATE CS combines this bill with 902, Comm Action CS by Criminal Justice -SJ 00131, CS read first time on 03/05/99 -SJ 00131
 - 03/05/99 SENATE Now in Fiscal Policy -SJ 00131
 - 03/18/99 SENATE On Committee agenda--Fiscal Policy, 03/24/99, 1 00 pm, Room--37S
 - 03/24/99 SENATE Comm Action -Favorable with 1 amendment(s) by Fiscal Policy -SJ 00352
 - 03/25/99 SENATE Placed on Calendar -SJ 00352
 - 04/07/99 SENATE Placed on Special Order Calendar -SJ 00468
 - 04/08/99 SENATE Placed on Special Order Calendar -SJ 00468, -SJ 00481
 - 04/13/99 SENATE Placed on Special Order Calendar -SJ 00481, -SJ 00512
 - 04/15/99 SENATE Placed on Special Order Calendar -SJ 00512, -SJ 00575
 - 04/16/99 SENATE Placed on Special Order Calendar -SJ 00575
 - 04/21/99 SENATE Placed on Special Order Calendar -SJ 00637
 - 04/22/99 SENATE Placed on Special Order Calendar -SJ 00637, -SJ 00707, Read second time -SJ 00675, Amendment(s) failed -SJ 00675, Amendment(s) adopted -SJ 00675, House Bill substituted -SJ 00675, Laid on Table, Iden/Sim/Compare Bill(s) passed, refer to CS/HB 421 (Ch 99-174)

S 56 GENERAL BILL by Grant; (CO-SPONSORS) Sullivan; Carlton; Forman; Cowin; Myers; Childers; Sebasta; Campbell; Klein (Similar H 0691)

- Fla Clean Indoor Air Act, provides legislative intent that "Fla Clean Indoor Air Act" is uniform statewide minimum code, repeals provision which provides that regulation of smoking is preempted to state Amends 386 202, repeals 386 209 Effective Date 10/01/1999
- 09/08/98 SENATE Prefiled
 - 11/10/98 SENATE Referred to Comprehensive Planning, Local and Military Affairs, Commerce and Economic Opportunities
 - 03/02/99 SENATE Introduced, referred to Comprehensive Planning, Local and Military Affairs, Commerce and Economic Opportunities -SJ 00019
 - 04/30/99 SENATE Died in Committee on Comprehensive Planning, Local and Military Affairs

S 58 GENERAL BILL by Kirkpatrick (Similar CS/CS/H 0019, S 0112)

- Skateboarding & Inline Skating, provides legislative purpose provides limitations on liability of governmental entities & public employees re persons who participate in skateboarding, inline skating, or freestyle bicycle riding on property owned or leased by governmental entity, provides for liability of independent concessionaires or other persons or organizations for certain injuries or damages, provides for effect of certain insurance, etc Creates 316 0085 Effective Date Upon becoming law
- 09/08/98 SENATE Prefiled
 - 11/10/98 SENATE Referred to Comprehensive Planning, Local and Military Affairs, Governmental Oversight and Productivity
 - 03/02/99 SENATE Introduced, referred to Comprehensive Planning, Local and Military Affairs, Governmental Oversight and Productivity -SJ 00019, Also referred to Fiscal Policy -SJ 00003

S 58 (CONTINUED)

- 03/24/99 SENATE Withdrawn from Comprehensive Planning, Local and Military Affairs, Governmental Oversight and Productivity, Fiscal Policy -SJ 00298, Withdrawn from further cons ,Iden/Sim/Compare Bill(s) passed, refer to CS/CS/HB 19 (Ch 99-133) -SJ 00298

S 60 GENERAL BILL/CS/1ST ENG by Criminal Justice, Brown-Waite, (CO-SPONSORS) Laurent (Similar H 0147)

- Pretrial Intervention Programs authorizes court to deny admission of defendant to pretrial substance-abuse education & treatment intervention program if defendant has rejected any prior offer of admission to such program Amends 948 08 Effective Date 07/01/1999
- 09/08/98 SENATE Prefiled
 - 11/10/98 SENATE Referred to Criminal Justice, Fiscal Policy
 - 11/20/98 SENATE On Committee agenda--Criminal Justice, 12/01/98, 3 00 pm, Room-A(LL-37)
 - 12/01/98 SENATE Comm Action. CS by Criminal Justice
 - 12/04/98 SENATE Now in Fiscal Policy
 - 12/28/98 SENATE On Committee agenda--Fiscal Policy, 01/07/99, 1 00 pm, Room--37S
 - 01/07/99 SENATE Comm Action -Favorable by Fiscal Policy
 - 01/11/99 SENATE Placed on Calendar
 - 03/02/99 SENATE Introduced, referred to Criminal Justice, Fiscal Policy -SJ 00020, On Committee agenda--Criminal Justice, 12/01/98, 3 00 pm, Room-A(LL-37), Comm Action CS by Criminal Justice -SJ 00015, CS read first time on 03/02/99 -SJ 00102, Now in Fiscal Policy -SJ 00015, On Committee agenda--Fiscal Policy, 01/07/99, 1 00 pm, Room--37S, Comm Action -Favorable by Fiscal Policy -SJ 00015, Placed on Calendar -SJ 00015
 - 03/17/99 SENATE Placed on Special Order Calendar -SJ 00289, Read second time -SJ 00289, Amendment(s) adopted -SJ 00289, Ordered engrossed -SJ 00289
 - 03/24/99 SENATE Read third time -SJ 00299, CS passed as amended, YEAS 38 NAYS 0 -SJ 00299
 - 03/25/99 HOUSE In Messages
 - 04/05/99 HOUSE Referred to Criminal Justice Appropriations (FRC) -HJ 00499
 - 04/06/99 HOUSE Received -HJ 00499
 - 04/21/99 HOUSE Withdrawn from Criminal Justice Appropriations (FRC) -HJ 00673, Placed on Calendar; Substituted for HB 147 -HJ 00676, Read second and third times -HJ 00676, CS passed, YEAS 117 NAYS 0 -HJ 00676
 - 04/21/99 SENATE Ordered enrolled -SJ 00651
 - 04/28/99 Signed by Officers and presented to Governor -SJ 01410
 - 05/13/99 Approved by Governor; Chapter No 99-152

S 62 GENERAL BILL/CS by Banking and Insurance; Thomas; (CO-SPONSORS) Mitchell; Gutman; Geller; Dawson-White; Campbell; Casas; Childers; Forman; Clary; Dyer (Compare CS/1ST ENG/H 0377)

- Bone Marrow Transplants, requires that coverage for bone-marrow-transplant procedures include costs of donor patient, makes legislative finding that provisions of act fulfill important state interest Amends 627 4236 Effective Date 01/01/2000
- 09/18/98 SENATE Prefiled
 - 11/10/98 SENATE Referred to Banking and Insurance, Fiscal Policy
 - 02/09/99 SENATE On Committee agenda--Banking and Insurance, 02/16/99, 12 30 pm, Room--110S
 - 02/16/99 SENATE Comm Action CS by Banking and Insurance
 - 02/17/99 SENATE Now in Fiscal Policy
 - 03/02/99 SENATE Introduced, referred to Banking and Insurance, Fiscal Policy -SJ 00020, On Committee agenda--Banking and Insurance, 02/16/99, 12 30 pm, Room--110S, Comm Action CS by Banking and Insurance -SJ 00015, CS read first time on 03/02/99 -SJ 00102, Now in Fiscal Policy -SJ 00015, Withdrawn from Fiscal Policy -SJ 00003, Placed on Calendar
 - 04/23/99 SENATE Placed on Special Order Calendar -SJ 00792, House Bill substituted -SJ 00720, Laid on Table, Iden /Sim / Compare Bill(s) passed, refer to CS/HB 377 (Ch 99-299)

S 64 GENERAL BILL/CS/1ST ENG by Judiciary; Grant; (CO-SPONSORS) Brown-Waite (Similar H 0339)

- Citizen Participation in Govt. Act, creates "Citizen Participation in Government Act" & provides for its purposes, defines terms, provides procedures for judiciary to respond to lawsuits re constitutional right to petition government for redress of grievances Effective Date Upon becoming law
- 09/23/98 SENATE Prefiled
 - 11/10/98 SENATE Referred to Judiciary, Governmental Oversight and Productivity
 - 01/12/99 SENATE On Committee agenda--Judiciary, 01/20/99, 1 00 pm, Room--110S

HISTORY OF SENATE BILLS

S 898 (CONTINUED)

- 02/08/99 SENATE Referred to Agriculture and Consumer Services, Banking and Insurance, Fiscal Policy
- 03/02/99 SENATE Introduced, referred to Agriculture and Consumer Services, Banking and Insurance, Fiscal Policy -SJ 00063, On Committee agenda—Agriculture and Consumer Services, 03/04/99, 1 00 pm, Room-301C
- 03/04/99 SENATE Comm Action Favorable with 2 amendment(s) by Agriculture and Consumer Services -SJ 00130
- 03/05/99 SENATE Now in Banking and Insurance -SJ 00130
- 03/11/99 SENATE On Committee agenda—Banking and Insurance, 03/16/99, 1 00 pm, 110S
- 03/16/99 SENATE Comm Action Favorable with 2 amendment(s) by Banking and Insurance -SJ 00290
- 03/17/99 SENATE Now in Fiscal Policy -SJ 00290
- 03/26/99 SENATE On Committee agenda—Fiscal Policy, 03/31/99, 9 00 am, Room-37S—Temporarily postponed
- 04/05/99 SENATE On Committee agenda—Fiscal Policy, 04/08/99, 10 00 am, Room-412K—Not considered
- 04/09/99 SENATE On Committee agenda—Fiscal Policy, 04/14/99, 2 00 pm, Room-212K
- 04/14/99 SENATE Comm Action -Favorable with 3 amendment(s) by Fiscal Policy -SJ 00575
- 04/15/99 SENATE Placed on Calendar -SJ 00575
- 04/22/99 SENATE Placed on Special Order Calendar -SJ 00707
- 04/23/99 SENATE Placed on Special Order Calendar -SJ 00707, -SJ 00792, Read second time -SJ 00719, Amendment(s) failed -SJ 00719, -SJ 00724, Amendment(s) adopted -SJ 00724, Amendment pending -SJ 00789
- 04/26/99 SENATE Placed on Special Order Calendar -SJ 00792, -SJ 00887
- 04/27/99 SENATE Placed on Special Order Calendar -SJ 00886, -SJ 01222
- 04/28/99 SENATE Placed on Special Order Calendar -SJ 01221, -SJ 01402
- 04/29/99 SENATE Placed on Special Order Calendar -SJ 01402, -SJ 01628
- 04/30/99 SENATE Placed on Special Order Calendar -SJ 01628, SJ 01633, -SJ 01926, Pending amendment withdrawn -SJ 01633, Amendment(s) adopted -SJ 01633, Read third time -SJ 01639, Passed as amended, YEAS 35 NAYS 3 -SJ 01639
- 04/30/99 HOUSE In Messages, Died in Messages

S 900 GENERAL BILL/CS by Banking and Insurance; Rossin (Compare CS/H 1003)

- Insurance, revises requirements for purchase of annuities by DOI, excludes certain corporations from definition of insurance agency under certain circumstances for purposes of sharing commissions, revises buyer's guide that must be used by insurers soliciting life insurance, authorizes DOI to adopt by rule model regulation of National Association of Insurance Commissioners re valuation of life insurance policies Amends 284 33, 626 094, 99, creates 627 478 Effective Date 07/01/1999
- 01/25/99 SENATE Prefiled
- 02/08/99 SENATE Referred to Banking and Insurance, Commerce and Economic Opportunities
- 03/02/99 SENATE Introduced, referred to Banking and Insurance, Commerce and Economic Opportunities -SJ 00063
- 03/31/99 SENATE On Committee agenda—Banking and Insurance, 04/05/99, 1 00 pm, Room-110S—Not considered
- 04/07/99 SENATE On Committee agenda—Banking and Insurance, 04/12/99, 10 00 am, Room-110S—Not considered
- 04/14/99 SENATE On Committee agenda—Banking and Insurance, 04/19/99, 9 00 am, Room-110S
- 04/19/99 SENATE Comm Action CS by Banking and Insurance -SJ 00638, CS read first time on 04/21/99 -SJ 00639
- 04/21/99 SENATE Now in Commerce and Economic Opportunities -SJ 00638
- 04/30/99 SENATE Died in Committee on Commerce and Economic Opportunities

S 902 GENERAL BILL by Silver (Similar CS/H 0421, Compare CS/1ST ENG/H 0381, H 0485, CS/S 0054)

- Criminal Prosecutions. (THIS BILL COMBINED IN CS/S54,902) provides that voluntary intoxication is not defense to prosecution for offense, provides exceptions Effective Date 07/01/1999
- 01/26/99 SENATE Prefiled
- 02/17/99 SENATE Referred to Criminal Justice, Fiscal Policy
- 03/02/99 SENATE Introduced, referred to Criminal Justice Fiscal Policy -SJ 00063, On Committee agenda—Criminal Justice, 03/03/99, 10 45 am, Room-37S
- 03/03/99 SENATE CS combines this bill with 54, Comm Action CS by Criminal Justice -SJ 00131. Original bill laid on Table, refer to combined CS/SB 54 (Laid on Table in Senate), Refer to CS/HB 421 (Ch 99-174)

S 904 GENERAL BILL/1ST ENG by Latvala; (CO-SPONSORS) Laurent; Carlton; Saunders; Kirkpatrick (Compare CS/CS/2ND ENG/S 0906)

- Surface Water Improvement & Mgmt TF creates Surface Water Improvement & Management Trust Fund within Environmental Protection Dept., provides its purposes Effective Date Contingent
- 01/26/99 SENATE Prefiled
- 02/12/99 SENATE Referred to Natural Resources, Fiscal Policy
- 03/02/99 SENATE Introduced, referred to Natural Resources, Fiscal Policy -SJ 00064, On Committee agenda—Natural Resources, 03/03/99, 8 30 am, Room-37S
- 03/03/99 SENATE Comm Action Favorable with 1 amendment(s) by Natural Resources -SJ 00124, Now in Fiscal Policy -SJ 00124
- 03/05/99 SENATE On Committee agenda—Fiscal Policy, 03/10/99, 3 15 pm, Room-37S
- 03/10/99 SENATE Comm Action -Favorable by Fiscal Policy -SJ 00217
- 03/11/99 SENATE Placed on Calendar -SJ 00217
- 03/16/99 SENATE Placed on Special Order Calendar -SJ 00256, Read second time -SJ 00256, Amendment(s) adopted -SJ 00256, Ordered engrossed -SJ 00256
- 03/17/99 SENATE Read third time -SJ 00287, Passed as amended, YEAS 36 NAYS 0 -SJ 00287
- 03/24/99 HOUSE In Messages
- 04/09/99 HOUSE Referred to Environmental Protection (RLC), General Government Appropriations (FRC) -HJ 00572
- 04/13/99 HOUSE Received -HJ 00572
- 04/30/99 HOUSE Died in Committee on Environmental Protection (RLC), (Ident/Sim/Compare Bills) passed, refer to CS/CS/SB 908 (Ch 99-247)

S 906 GENERAL BILL/2ND ENG by Latvala; (CO-SPONSORS) Laurent; Carlton; Saunders; Kirkpatrick (Similar H 1827, Compare H 0641, H 0653, CS/CS/2ND ENG/S 0908)

- Fla Forever Trust Fund/DEP, creates said trust fund, provides sources of moneys, provides purposes & requirements, provides duties of DEP Creates 259 1051 Effective Date 07/01/1999
- 01/26/99 SENATE Prefiled
- 02/08/99 SENATE Referred to Natural Resources, Fiscal Policy
- 02/09/99 SENATE On Committee agenda—Natural Resources, 02/16/99, 12 30 pm, Room-37S—Not considered
- 03/02/99 SENATE Introduced, referred to Natural Resources, Fiscal Policy -SJ 00064, On Committee agenda—Natural Resources, 02/16/99, 12 30 pm, Room-37S—Not considered, On Committee agenda—Natural Resources, 03/03/99, 8 30 am, Room-37S
- 03/03/99 SENATE Comm Action Favorable with 1 amendment(s) by Natural Resources -SJ 00124, Now in Fiscal Policy -SJ 00124
- 03/05/99 SENATE On Committee agenda—Fiscal Policy, 03/10/99, 3 15 pm, Room-37S
- 03/10/99 SENATE Comm Action -Favorable by Fiscal Policy -SJ 00217
- 03/11/99 SENATE Placed on Calendar -SJ 00217
- 03/16/99 SENATE Placed on Special Order Calendar -SJ 00256, Read second time -SJ 00256, Amendment(s) adopted -SJ 00256, Ordered engrossed -SJ 00256
- 03/17/99 SENATE Read third time -SJ 00287, Passed as amended, YEAS 37 NAYS 0 -SJ 00287
- 03/24/99 HOUSE In Messages
- 04/05/99 HOUSE Referred to Environmental Protection (RLC), General Government Appropriations (FRC) HJ 00500
- 04/06/99 HOUSE Received -HJ 00500
- 04/29/99 HOUSE Withdrawn from Environmental Protection (RLC), General Government Appropriations (FRC) -HJ 01672, Placed on Calendar, Read second time -HJ 01813, Amendment(s) adopted -HJ 01813, Read third time -HJ 01813, Passed as amended, YEAS 119 NAYS 0 -HJ 01813
- 04/29/99 SENATE In returning messages
- 04/30/99 SENATE Was taken up -SJ 01656, Concurred -SJ 01657, Passed as amended, YEAS 39 NAYS 0 -SJ 01657, Ordered engrossed, then enrolled -SJ 01657
- 05/25/99 Signed by Officers and presented to Governor
- 06/08/99 Approved by Governor, Chapter No 99-246, See also CS/CS/SB 908 (Ch 99-247)

S 908 GENERAL BILL/CS/CS/2ND ENG by Fiscal Policy; Natural Resources; Latvala; (CO-SPONSORS) Laurent; Carlton; Saunders; Kirkpatrick; Cowin (Similar CS/CS/1ST ENG/H 2021, Compare CS/H 0569, H 0641, H 0653, CS/1ST ENG/H 1535, 1ST ENG/H 1765, H 1827, CS/2ND ENG/H 1955, CS/3RD ENG/H 2087, H 2259, CS/CS/1ST ENG/S 0306, 1ST ENG/S 0904, 2ND ENG/S 0906, CS/2ND ENG/S 1250, CS/1ST ENG/S 2066, CS/S 2336)

HISTORY OF SENATE BILLS

- S 2164 (CONTINUED)**
 03/30/99 SENATE Also referred to Fiscal Policy -SJ 00372, Now in Fiscal Policy -SJ 00419
 04/30/99 SENATE Died in Committee on Fiscal Policy
- S 2166 GENERAL BILL by Saunders**
Delinquent Children specifies criteria for court-ordered commitment of juvenile felony offenders to residential commitment programs of Juvenile Justice Dept at described restrictiveness levels, conforms provisions re court's powers of disposition in delinquency cases, provides exceptions, conforms cross-references Amends 985 231, 314 Effective Date 10/01/1999.
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Criminal Justice, Fiscal Policy -SJ 00266
 04/30/99 SENATE Died in Committee on Criminal Justice
- S 2165 GENERAL BILL by Clary**
Workers' Comp/Employer Exemptions, authorizes construction-license applicant to receive temporary license from DBPR upon submission of exemption application issued by Workers' Compensation Division under specific provisions Amends 489 115 Effective Date 07/01/1999
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Regulated Industries, Fiscal Policy -SJ 00266
 04/23/99 SENATE Withdrawn from Regulated Industries, Fiscal Policy -SJ 00715, Withdrawn from further consideration -SJ 00715
- S 2170 GENERAL BILL by Hargrett**
Affordable Housing creates program in Fla Housing Finance Corporation to encourage development of affordable housing within urban commercial districts, provides for study & report Effective Date 07/01/1999
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Comprehensive Planning, Local and Military Affairs, Governmental Oversight and Productivity, Fiscal Policy -SJ 00266
 04/30/99 SENATE Died in Committee on Comprehensive Planning, Local and Military Affairs
- S 2172 GENERAL BILL by Hargrett**
Florida Housing Finance Corporation, abolishes corporation, provides for transfer of its assets, liabilities, & responsibilities to Florida Housing Finance Agency Effective Date Upon becoming law
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Comprehensive Planning, Local and Military Affairs, Governmental Oversight and Productivity, Fiscal Policy -SJ 00266
 04/30/99 SENATE Died in Committee on Comprehensive Planning, Local and Military Affairs
- S 2174 GENERAL BILL/CS by Transportation; Hargrett (Compare CS/H 1147)**
Land Use & Transportation Planning provides for coordination of capital-improvements element with Metropolitan Planning Organizations' long-range transportation plans, specifies elements of comprehensive plans, requires regional planning councils to plan for intermodal facilities, requires DOT to provide for use of traffic-calming techniques, creates Fla Intrastate Transportation System & Plan, authorizes MPOs to share data & technical expertise with local govts, etc Amends FS Effective Date Upon becoming law
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Transportation, Fiscal Policy -SJ 00266
 03/25/99 SENATE On Committee agenda Transportation, 03/30/99, 2 00 pm, Room-309C—Not considered
 04/01/99 SENATE On Committee agenda—Transportation, 04/06/99, 2 00 pm, Room-309C
 04/06/99 SENATE Comm Action CS by Transportation -SJ 00481, CS read first time on 04/08/99 -SJ 00485
 04/08/99 SENATE Now in Fiscal Policy -SJ 00481
 04/30/99 SENATE Died in Committee on Fiscal Policy
- S 2176 GENERAL BILL by Silver (Similar CS/H 1453, Compare H 1455, H 1457, H 1459, H 1461, S 2178, S 2180, S 2182, S 2184)**
Educ. Facilities/Video Lotteries, redesignates specified chapter of Florida Statutes as "Florida Public Education Lottery Chapter", defines terms "video lottery game," "video lottery terminal vendor," "net terminal income," & "video lottery retailer", prohibits participation of minors in such games, requires warning signs, provides requirements for such games & retailers, provides for transfer of funds into Public Education Capital Outlay & Debt Service TF, etc Amends FS Effective Date Contingent
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Fiscal Resource, Regulated Industries -SJ 00267
 04/30/99 SENATE Died in Committee on Fiscal Resource
- S 2178 GENERAL BILL by Silver (Similar H 1461, Compare CS/H 1453, S 2176)**
Public Records/Lottery Dept, provides exemptions from public records requirements for specified information obtained by Lottery Dept in connection with establishment & operation of video lottery games, & for certain identifying information re winner of video lottery game, provides conditions under which such information may be disclosed, provides for future review & repeal & finding of public necessity Creates 24 1126 Effective Date Contingent
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Fiscal Resource, Rules and Calendar -SJ 00267
 04/30/99 SENATE Died in Committee on Fiscal Resource
- S 2180 GENERAL BILL by Silver (Identical H 1455, Compare CS/H 1453, S 2176)**
Video Lottery Purse Trust Fund, creates said trust fund within DBPR, provides for source of moneys & purposes, provides for annual carryforward of funds, provides for future review & termination or re-creation of trust fund Creates 550 2631 Effective Date Contingent
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Fiscal Resource, Regulated Industries -SJ 00267
 04/30/99 SENATE Died in Committee on Fiscal Resource
- S 2182 GENERAL BILL by Silver (Identical H 1457, Compare CS/H 1453, S 2176)**
Video Lottery Thoroughbred TF, creates said trust fund within DBPR, provides for source of moneys & purposes, provides for annual carryforward of funds, provides for future review & termination or re-creation of trust fund Creates 550 2632 Effective Date Contingent
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Fiscal Resource, Regulated Industries -SJ 00267
 04/30/99 SENATE Died in Committee on Fiscal Resource
- S 2184 GENERAL BILL by Silver (Identical H 1459, Compare CS/H 1453, S 2176)**
Video Lottery Administrative TF, creates said trust fund within Lottery Dept, provides for source of moneys & purposes, provides for annual carryforward of funds, provides for future review & termination or re-creation of trust fund Creates 24 1126 Effective Date Contingent
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Fiscal Policy, Regulated Industries -SJ 00267
 04/30/99 SENATE Died in Committee on Fiscal Policy
- S 2186 GENERAL BILL/CS/1ST ENG by Education; Sullivan (Similar H 2141)**
Public Schools/Deregulated, provides for continuation of deregulated public schools pilot project, authorizes additional districts to participate, revises exemptions from statute for purposes of said project Amends 228 0565 Effective Date 07/01/1999
 03/02/99 SENATE Filed
 03/16/99 SENATE Introduced, referred to Education, Fiscal Policy -SJ 00267
 03/31/99 SENATE On Committee agenda—Education, 04/05/99, 1 00 pm, Room-412K
 04/05/99 SENATE Comm Action CS by Education -SJ 00481, CS read first time on 04/08/99 -SJ 00485
 04/08/99 SENATE Now in Fiscal Policy -SJ 00481
 04/15/99 SENATE Withdrawn from Fiscal Policy -SJ 00523, Placed on Calendar
 04/23/99 SENATE Placed on Special Order Calendar for 04/26/99, Placed on Consent Calendar -SJ 00792, Read second and third times -SJ 00778, CS passed, YEAS 39 NAYS 0 -SJ 00778, Immediately certified -SJ 00778
 04/23/99 HOUSE In Messages
 04/28/99 HOUSE Received -HJ 01513, Read second time -HJ 01513, Amendment(s) adopted -HJ 01513, Read third time -HJ 01514, CS passed as amended, YEAS 110 NAYS 5 -HJ 01514
 04/28/99 SENATE In returning messages
 04/29/99 SENATE Amendment(s) to House amendment(s) adopted -SJ 01604, Concurred in House amendment(s) as amended -SJ 01604, Requested House to concur -SJ 01604, CS passed as amended, YEAS 40 NAYS 0 -SJ 01604
 04/29/99 HOUSE In returning messages
 04/30/99 HOUSE Concurred -HJ 02160, CS passed as amended, YEAS 115 NAYS 1 -HJ 02160
 04/30/99 SENATE Ordered engrossed then enrolled -SJ 01927
 05/25/99 Signed by Officers and presented to Governor
 06/08/99 Approved by Governor, Chapter No 99-253
- S 2188 GENERAL BILL/CS by Criminal Justice, Sebesta (Compare CS/1ST ENG/H 0381, CS/H 0421, H 0485, CS/S 0054)**

(CONTINUED ON NEXT PAGE)

HISTORY OF SENATE BILLS

S 2188 (CONTINUED)

Criminal Defense of Insanity, provides requirements for establishment of insanity defense, specifies conditions that do not constitute legal insanity; provides that defendant has burden of proving insanity defense by clear & convincing evidence Creates 775 027 Effective Date Upon becoming law

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Criminal Justice, Fiscal Policy -SJ 00267

03/24/99 SENATE On Committee agenda—Criminal Justice, 03/29/99, 3 30 pm, Room-37S

03/29/99 SENATE Comm Action CS by Criminal Justice -SJ 00436, CS read first time on 04/06/99 -SJ 00448

03/31/99 SENATE Now in Fiscal Policy -SJ 00436

04/16/99 SENATE Withdrawn from Fiscal Policy -SJ 00586, Placed on Calendar

04/30/99 SENATE Died on Calendar, Iden/Sim/Compare Bill(s) passed, refer to CS/HB 421 (Ch 99-174)

S 2190 GENERAL BILL by Forman (Compare CS/S 1900)

Developmental Disabilities/CFS/AHCA, provides exclusion from definition of term "direct service provider", clarifies screening requirements for certain providers, provides that CFS Dept & AHCA share responsibility for receiver-ship proceedings for intermediate care facilities for developmentally disabled, amends membership of family care councils, amends terms of office Amends 393 063, 0655, 0678, 502 Effective Date Upon becoming law.

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Children and Families, Fiscal Policy -SJ 00268

04/30/99 SENATE Died in Committee on Children and Families

S 2192 GENERAL BILL/CS/CS/CS/2ND ENG by Fiscal Policy; Judiciary; Children and Families; Klein

Sexually Violent Predators, transfers provisions re civil commitment of such predators to provisions re mental health, clarifies duty of public defender to represent sexually violent predators who are indigent, prescribes jury size in trial to determine whether person is sexually violent predator, requires Criminal Justice Estimating Conference to continually develop official projections re number of discharges & commitments, etc Amends Chs 394, 916, 27 51 Effective Date 05/26/1999

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Children and Families, Judiciary, Fiscal Policy -SJ 00268

03/25/99 SENATE On Committee agenda—Children and Families, 03/30/99, 4 30 pm, Room-37S

03/30/99 SENATE Comm Action CS by Children and Families -SJ 00436, CS read first time on 04/06/99 -SJ 00448

04/01/99 SENATE Now in Judiciary -SJ 00436

04/02/99 SENATE On Committee agenda—Judiciary, 04/07/99, 2 00 pm, Room-110S

04/07/99 SENATE Comm Action CS/CS by Judiciary -SJ 00513, CS read first time on 04/13/99 -SJ 00517

04/09/99 SENATE Now in Fiscal Policy -SJ 00513, On Committee agenda—Fiscal Policy, 04/14/99, 2 00 pm, Room-212K

04/14/99 SENATE Comm. Action -CS/CS/CS by Fiscal Policy -SJ 00593, CS read first time on 04/16/99 -SJ 00595

04/16/99 SENATE Placed on Calendar -SJ 00593

04/22/99 SENATE Placed on Special Order Calendar -SJ 00707

04/23/99 SENATE Placed on Special Order Calendar -SJ 00792, -SJ 00792

04/26/99 SENATE Placed on Special Order Calendar -SJ 00792, -SJ 00886, Read second time -SJ 00825, Amendment(s) adopted -SJ 00825, Ordered engrossed -SJ 00825

04/27/99 SENATE Read third time -SJ 01185, Amendment(s) adopted -SJ 01186, CS passed as amended, YEAS 40 NAYS 0 -SJ 01186

04/27/99 HOUSE In Messages

04/30/99 HOUSE Received -HJ 01921, Read second and third times -HJ 01921, CS passed, YEAS 116 NAYS 0 -HJ 01921

04/30/99 SENATE Ordered enrolled -SJ 01927

05/12/99 Signed by Officers and presented to Governor

05/26/99 Approved by Governor, Chapter No 99-222

S 2194 GENERAL BILL by Thomas

Public Records & Meetings, provides exemptions for specified time from public records requirements for responses to requests for proposals or invitations to bid by State Group Insurance Division which are related to employee benefit programs, provides exemptions from public meetings requirements for portions of meetings where such records are discussed Amends 110 123 Effective Date Upon becoming law

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Governmental Oversight and Productivity, Rules and Calendar -SJ 00268

04/29/99 SENATE Withdrawn from Governmental Oversight and Productivity, Rules and Calendar -SJ 01412, Withdrawn from further consideration -SJ 01412

S 2196 GENERAL BILL by Thomas (Similar H 2157)

Workers' Compensation, deletes prohibition against administrator contracting to review claims of Special Disability Trust Fund & qualified entity assuming obligations of fund being affiliates of one another or having agreements Amends 440 49 Effective Date Upon becoming law

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Banking and Insurance, Fiscal Policy -SJ 00268

04/29/99 SENATE Withdrawn from Banking and Insurance, Fiscal Policy -SJ 01412, Withdrawn from further consideration -SJ 01412

S 2198 GENERAL BILL by Laurent (Compare CS/1ST ENG/H 1707, CS/CS/S 2410)

Law Enforcement Radio System, authorizes DMS to acquire State Agency Law Enforcement Radio System, authorizes Joint Task Force on State Agency Law Enforcement Communications to advise department regarding system, deletes obsolete provisions Amends 282 1095 Effective Date 07/01/1999

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Governmental Oversight and Productivity, Fiscal Policy -SJ 00268

04/30/99 SENATE Died in Committee on Governmental Oversight and Productivity, Iden/Sim/Compare Bill(s) passed, refer to CS/HB 1707 (Ch 99-399)

S 2200 GENERAL BILL by Laurent (Compare 2ND ENG/H 1507)

Elections/State Agencies/Soliciting, prohibits state agencies from soliciting pledges or authorizing or conducting polls or surveys re candidacies for public office; exempts polls or surveys conducted by institutions of higher learning for research purposes Effective Date 10/01/1999

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Ethics and Elections -SJ 00268

03/18/99 SENATE On Committee agenda—Ethics and Elections, 03/23/99, 3 30 pm, Room-309C

03/23/99 SENATE Comm Action -Favorable by Ethics and Elections -SJ 00309 Placed on Calendar -SJ 00309

04/06/99 SENATE Placed on Special Order Calendar -SJ 00435

04/07/99 SENATE Placed on Special Order Calendar -SJ 00434, -SJ 00468

04/08/99 SENATE Placed on Special Order Calendar -SJ 00468, -SJ 00481, Read second time -SJ 00478

04/16/99 SENATE Read third time -SJ 00591; Passed, YEAS 39 NAYS 0 -SJ 00591, Immediately certified -SJ 00591

04/16/99 HOUSE In Messages

04/29/99 HOUSE Received -HJ 01739; Read second time -HJ 01739, Amendment pending—Temporarily postponed -HJ 01739

04/30/99 HOUSE Died on Calendar

S 2202 GENERAL BILL by Webster (Compare CS/H 1839, CS/S 0880)

Health Department transfers to Health Dept powers, duties, functions & assets that relate to consumer complaint services, investigations, & prosecutorial services that are performed by AHCA under contract with said department, deletes provisions authorizing said department to enter into such contracts with AHCA Amends 20 43 Effective Date 07/01/1999

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Health, Aging and Long-Term Care, Fiscal Policy -SJ 00268

04/30/99 SENATE Died in Committee on Health, Aging and Long-Term Care

S 2204 GENERAL BILL by Webster

Treasurer's Office Location clarifies location of Treasurer's office Amends 18 03 Effective Date Upon becoming law

03/02/99 SENATE Filed

03/16/99 SENATE Introduced, referred to Governmental Oversight and Productivity -SJ 00268

04/01/99 SENATE On Committee agenda—Governmental Oversight and Productivity, 04/06/99, 2 00 pm, Room-37S—Not considered

04/08/99 SENATE On Committee agenda—Governmental Oversight and Productivity, 04/13/99, 1 30 pm, Room-37S—Temporarily postponed

04/30/99 SENATE Died in Committee on Governmental Oversight and Productivity

S 2206 GENERAL BILL/CS by Governmental Oversight and Productivity; Webster

Governmental Reorganization, clarifies location & hours of operation of Comptroller's office, transfers Banking Div, Securities & Investor Protection Div, & Financial Investigations Div of Banking & Finance Dept to Insurance Dept & renames Insurance Dept as Finance, Insurance, Banking, & Securities Dept, redesignates Banking & Finance Dept as Comptroller's Office, requires Lt Governor to prepare plan & report to Governor & Legisla-

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HISTORY OF HOUSE BILLS

H 371 (CONTINUED)

03/12/99 HOUSE Now in Insurance (CAC) -HJ 00316
04/30/99 HOUSE Died in Committee on Insurance (CAC)

H 373 GENERAL BILL by Bitner

Long-Term Care/Educ Enhancement TF, specifies deposit & allocation of certain additional lottery revenues, allocates specified portions of certain additional said revenues to Educational Enhancement TF & Long-Term Care TF, creates Long-Term Care TF, provides for admin by Elderly Affairs Dept., requires dept. to adopt rules providing for grants from fund to counties for certain purposes, provides for future review & termination, etc Amends 24 121, creates 400 901 Effective Date 07/01/1999

01/21/99 HOUSE Prefiled
01/27/99 HOUSE Referred to Elder Affairs & Long-Term Care (HFC), Regulated Services (CAC), Governmental Rules & Regulations (PRC), General Government Appropriations (FRC)
03/01/99 HOUSE Withdrawn from Elder Affairs & Long-Term Care (HFC), Regulated Services (CAC), Governmental Rules & Regulations (PRC), General Government Appropriations (FRC), Withdrawn prior to introduction -HJ 00043

H 375 GENERAL BILL by Constantine, (CO-SPONSORS) Greenstein (Compare 1ST ENG/H 0661, CS/S 0682)

Tax/Skyboxes & Other Box Seats, provides exemption for charges for renting, leasing, or granting of license for use of skyboxes, luxury boxes, or other box seats for certain events imposed by not-for-profit sponsoring organizations, provides that no tax imposed on such transactions & not actually paid or collected shall be due from such organization Amends 212 04 Effective Date Upon becoming law

01/25/99 HOUSE Prefiled
02/03/99 HOUSE Referred to Finance & Taxation (FRC), General Government Appropriations (FRC)
03/02/99 HOUSE Introduced, referred to Finance & Taxation (FRC), General Government Appropriations (FRC) -HJ 00043
04/30/99 HOUSE Died in Committee on Finance & Taxation (FRC), Ident/Sim /Compare Bill(s) passed, refer to HB 561 (Ch 99-238)

H 377 GENERAL BILL/CS/1ST ENG by Insurance (CAC); Bense, (CO-SPONSORS) Goode, Maygarden, Futch; Ritter; Logan; Jones; Warner; Flanagan; Rayson; Healey; Fuller; Kelly; Peaden; Andrews; Waters; Brummer; Ritchie, Russell, Goodlette; Fasano; Jacobs, Posey; Crow; Bilirakis; Levine; Heyman; Harrington; Detert (Compare CS/S 0062, S 2398)

Organ & Bone Marrow Transplants, increases membership of Organ Transplant Advisory Council, increases term of council chair, requires that coverage for bone-marrow-transplant procedures include costs of donor patient, provides limitation, provides legislative finding of important state interest Amends 381 0602, 627 4236 Effective Date 01/01/2000

01/26/99 HOUSE Prefiled
02/03/99 HOUSE Referred to Health Care Services (HFC), Insurance (CAC), General Government Appropriations (FRC)
02/19/99 HOUSE On Committee agenda—Health Care Services (HFC), 03/01/99, 1 00 pm, Reed Hall—Discussed
03/02/99 HOUSE Introduced, referred to Health Care Services (HFC), Insurance (CAC), General Government Appropriations (FRC) -HJ 00043, On Committee agenda—Health Care Services (HFC), 03/01/99, 1 00 pm, Reed Hall—Discussed
03/09/99 HOUSE On Committee agenda—Health Care Services (HFC) 03/11/99, 9 00 am, Reed Hall
03/11/99 HOUSE Comm Action Unanimously Favorable with 3 amendment(s) by Health Care Services (HFC) -HJ 00316
03/12/99 HOUSE Now in Insurance (CAC) -HJ 00316
03/18/99 HOUSE On Committee agenda—Insurance (CAC), 03/22/99, 1 00 pm, Reed Hall
03/22/99 HOUSE Comm Action Unanimously CS by Insurance (CAC) -HJ 00402
03/25/99 HOUSE CS read first time on 03/25/99 -HJ 00401, Pending review of CS under Rule 113 Now in General Government Appropriations (FRC) -HJ 00402
04/07/99 HOUSE On Committee agenda—General Government Appropriations (FRC), 04/09/99, 9 45 am, 214C
04/09/99 HOUSE Comm Action -Unanimously Favorable by General Government Appropriations (FRC) -HJ 00580
04/12/99 HOUSE Placed on calendar, available for General Calendar -HJ 00580
04/15/99 HOUSE Placed on Special Order Calendar, Retained on Calendar
04/21/99 HOUSE Placed on General Calendar, Placed on Special Order Calendar, Read second time -HJ 00728, Amendment(s) adopted -HJ 00728

H 377 (CONTINUED)

04/22/99 HOUSE Read third time -HJ 00758, CS passed as amended, YEAS 110 NAYS 0 -HJ 00758
04/22/99 SENATE In Messages
04/23/99 SENATE Received, referred to Banking and Insurance, Fiscal Policy -SJ 00795, Immediately withdrawn from Banking and Insurance, Fiscal Policy -SJ 00720, Substituted for CS/SB 62 -SJ 00720, Read second time -SJ 00720
04/26/99 SENATE Read third time -SJ 00836, CS passed, YEAS 40 NAYS 0 -SJ 00836
04/26/99 HOUSE Ordered enrolled -HJ 01145
05/26/99 Signed by Officers and presented to Governor
06/08/99 Approved by Governor, Chapter No 99-299

H 379 GENERAL BILL/CS by Crime & Punishment (CRC); Russell, (CO-SPONSORS) Bense; Fasano; Greenstein; Effman; Jacobs, Gottlieb; Posey (Identical CS/S 1262)

Dog & Cat Fur/Sale, prohibits killing of dog or cat with sole intent of selling or giving away pelt of animal, provides third degree felony penalty for violation, prohibits possession import into this state, selling, buying, giving away, or acceptance of any pelt of dog or cat with sole intent of selling or giving away pelt, provides that it is unlawful to sell any item of clothing made in whole or in part from dog or cat fur, etc Creates 828 123, 1231 Effective Date Upon becoming law

01/26/99 HOUSE Prefiled
02/03/99 HOUSE Referred to Agriculture (RLC), Crime & Punishment (CRC), Criminal Justice Appropriations (FRC)
03/02/99 HOUSE Introduced, referred to Agriculture (RLC), Crime & Punishment (CRC), Criminal Justice Appropriations (FRC) -HJ 00044
03/15/99 HOUSE On Committee agenda—Agriculture (RLC), 03/17/99, 3 30 pm, 214C
03/17/99 HOUSE Comm Action Unanimously Favorable with 5 amendment(s) by Agriculture (RLC) -HJ 00383
03/19/99 HOUSE Now in Crime & Punishment (CRC) -HJ 00383
03/31/99 HOUSE On Committee agenda—Crime & Punishment (CRC), 04/05/99, 3 30 pm, 214C
04/05/99 HOUSE Comm Action Unanimously CS by Crime & Punishment (CRC) -HJ 00580
04/13/99 HOUSE CS read first time on 04/13/99 -HJ 00576
04/09/99 HOUSE Pending review of CS under Rule 113, Now in Criminal Justice Appropriations (FRC) -HJ 00580
04/19/99 HOUSE On Committee agenda—Criminal Justice Appropriations (FRC), 04/20/99, 4 00 pm, 116K
04/20/99 HOUSE Comm Action -Unanimously Favorable by Criminal Justice Appropriations (FRC) -HJ 00752
04/21/99 HOUSE Placed on calendar, available for General Calendar -HJ 00752
04/30/99 HOUSE Died on Calendar

H 381 GENERAL BILL/CS/1ST ENG by Crime & Punishment (CRC); J. Miller; Bilirakis; (CO-SPONSORS) Putnam; Kyle; Hart; Kilmer, Harrington; Crist (Compare H 0465, S 0902, CS/S 2188)

Criminal Defense of Insanity, provides requirements for establishment of insanity defense defines "mental infirmity, disease, or defect", specifies conditions that do not constitute legal insanity, provides that defendant has burden of proving insanity defense by clear & convincing evidence Creates 775 027 Effective Date Upon becoming law

01/26/99 HOUSE Prefiled
02/03/99 HOUSE Referred to Crime & Punishment (CRC), Judiciary (CJC), Criminal Justice Appropriations (FRC)
02/23/99 HOUSE On Committee agenda—Crime & Punishment (CRC), 03/03/99, 1 00 pm, 214C
03/02/99 HOUSE Introduced referred to Crime & Punishment (CRC), Judiciary (CJC), Criminal Justice Appropriations (FRC) -HJ 00044, On Committee agenda—Crime & Punishment (CRC), 03/03/99 1 00 pm, 214C—Temporarily deferred
03/04/99 HOUSE On Committee agenda—Crime & Punishment (CRC), 03/09/99, 1 00 pm, 214C
03/09/99 HOUSE Comm Act on Unanimously CS by Crime & Punishment (CRC) -HJ 00317
03/16/99 HOUSE CS read first time on 03/16/99 -HJ 00313
03/15/99 HOUSE Pending review of CS under Rule 113
03/16/99 HOUSE Now in Judiciary (CJC) -HJ 00317
03/26/99 HOUSE On Committee agenda—Judiciary (CJC), 03/30/99, 4 00 pm, Morris Hall
03/30/99 HOUSE Comm Action Favorable by Judiciary (CJC) -HJ 00512
04/01/99 HOUSE Now in Criminal Justice Appropriations (FRC) -HJ 00512
04/13/99 HOUSE Withdrawn from Criminal Justice Appropriations (FRC) -HJ 00556, Placed on Calendar

HISTORY OF HOUSE BILLS

H 381 (CONTINUED)

- 04/23/99 HOUSE Placed on Special Order Calendar, Read second time -HJ 01019, Amendment(s) adopted -HJ 01019
- 04/26/99 HOUSE Read third time -HJ 01119, CS passed as amended, YEAS 118 NAYS 0 -HJ 01119
- 04/26/99 SENATE In Messages
- 04/28/99 SENATE Received, referred to Criminal Justice, Fiscal Policy -SJ 01405
- 04/30/99 SENATE Died in Committee on Criminal Justice

H 383 GENERAL BILL/CS by Business Regulation & Consumer Affairs (CAC); Goodlette; (CO-SPONSORS) Brown; Fasano; Merchant, Jones; Fiorentino; Warner; Cosgrove; Bilirakis, Sublette; Gay; Posey; Waters, Ogles; Hafner; Kelly; Farkas; Byrd; Edwards; Harrington; Russell, Kosmas, Argenziano; Greenstein; Spratt; Putnam, C. Green; Frankel (Similar H 0285, CS/S 0814, Compare S 2266)

- Residential Property Associations, provides that certain persons may be deemed members of association & eligible to serve as director of condominium, cooperative, homeowners', or mobile homeowners' associations under certain circumstances, includes cooperatives, residential subdivisions, cooperative associations, & homeowners' associations as defined in specified provisions within provisions of law re penny-ante games & re bingo, etc Amends Chs 607, 617, 719, 723, 849 Effective Date 06/18/1999
- 01/26/99 HOUSE Prefiled
 - 02/03/99 HOUSE Referred to Real Property & Probate (CJC), Business Regulation & Consumer Affairs (CAC), General Government Appropriations (FRC)
 - 02/05/99 HOUSE On Committee agenda—Real Property & Probate (CJC), 02/17/99, 1 00 pm, 314-HOB
 - 02/17/99 HOUSE Comm Action Unanimously Favorable with 5 amendment(s) by Real Property & Probate (CJC)
 - 02/19/99 HOUSE Now in Business Regulation & Consumer Affairs (CAC)
 - 03/02/99 HOUSE Introduced, referred to Real Property & Probate (CJC), Business Regulation & Consumer Affairs (CAC), General Government Appropriations (FRC) -HJ 00044, On Committee agenda—Real Property & Probate (CJC), 02/17/99, 1 00 pm, 314-HOB, Comm Action Unanimously Favorable with 5 amendment(s) by Real Property & Probate (CJC) -HJ 00105, Now in Business Regulation & Consumer Affairs (CAC) -HJ 00105
 - 03/15/99 HOUSE On Committee agenda—Business Regulation & Consumer Affairs (CAC), 03/17/99, 1 00 pm, 413C
 - 03/17/99 HOUSE Comm Action Unanimously CS by Business Regulation & Consumer Affairs (CAC) -HJ 00384
 - 03/24/99 HOUSE CS read first time on 03/24/99 -HJ 00378
 - 03/22/99 HOUSE Pending review of CS under Rule 113
 - 03/24/99 HOUSE Now in General Government Appropriations (FRC) -HJ 00384
 - 04/07/99 HOUSE On Committee agenda—General Government Appropriations (FRC), 04/09/99, 9 45 am, 214C
 - 04/09/99 HOUSE Comm Action -Unanimously Favorable by General Government Appropriations (FRC) -HJ 00580
 - 04/12/99 HOUSE Placed on calendar, available for General Calendar -HJ 00580
 - 04/21/99 HOUSE Placed on General Calendar, Read second and third times -HJ 00681, CS passed, YEAS 114 NAYS 0 -HJ 00682
 - 04/21/99 SENATE In Messages
 - 04/22/99 SENATE Received, referred to Regulated Industries -SJ 00712, Immediately withdrawn from Regulated Industries -SJ 00693, Substituted for CS/SB 814 -SJ 00693, Read second time -SJ 00693
 - 04/26/99 SENATE Read third time -SJ 00827, CS passed, YEAS 38 NAYS 0 -SJ 00828
 - 04/26/99 HOUSE Ordered enrolled -HJ 01145
 - 06/04/99 Signed by Officers and presented to Governor
 - 06/18/99 Approved by Governor, Chapter No 99-382

H 385 GENERAL BILL/1ST ENG by Wasserman Schultz; (CO-SPONSORS) Edwards, Ritter; Sobel, Greenstein, Henriquez, Gottlieb; Casey; Barreiro, Jacobs, Kilmer; Villalobos; Reddick (Similar S 1220)

- Residential Swimming Pool Safety, creates "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act", provides pool safety feature requirements & options provides penalties, provides pool barrier requirements, provides for drowning prevention education program & public information publication, requires pool contractors, home builders, & developers to provide buyers with certain information provides rulemaking authority, etc Creates 515 21- 37 Effective Date 10/01/1999
- 01/26/99 HOUSE Prefiled

H 386 (CONTINUED)

- 02/03/99 HOUSE Referred to Governmental Rules & Regulations (PRC), Community Affairs (PRC), Crime & Punishment (CRC), Health & Human Services Appropriations (FRC)
- 02/19/99 HOUSE On Committee agenda—Governmental Rules & Regulations (PRC), 03/01/99, 3 30 pm, 413C
- 03/01/99 HOUSE Comm Action Favorable by Governmental Rules & Regulations (PRC)—Preliminary
- 03/02/99 HOUSE Introduced, referred to Governmental Rules & Regulations (PRC), Community Affairs (PRC), Crime & Punishment (CRC), Health & Human Services Appropriations (FRC) -HJ 00044, On Committee agenda—Governmental Rules & Regulations (PRC), 03/01/99, 3 30 pm, 413C, Comm Action Favorable by Governmental Rules & Regulations (PRC) -HJ 00179
- 03/03/99 HOUSE Now in Community Affairs (PRC) -HJ 00179
- 03/18/99 HOUSE On Committee agenda—Community Affairs (PRC), 03/22/99, 3 15 pm, Morris Hall
- 03/22/99 HOUSE Comm Action. Unanimously Favorable with 3 amendment(s) by Community Affairs (PRC) -HJ 00387
- 03/24/99 HOUSE Now in Crime & Punishment (CRC) -HJ 00387
- 03/31/99 HOUSE On Committee agenda—Crime & Punishment (CRC), 04/05/99, 3 30 pm, 214C
- 04/05/99 HOUSE Comm Action Favorable with 1 amendment(s) by Crime & Punishment (CRC) -HJ 00550
- 04/07/99 HOUSE Now in Health & Human Services Appropriations (FRC) -HJ 00550
- 04/19/99 HOUSE On Committee agenda—Health & Human Services Appropriations (FRC), 04/20/99, 4 00 pm, Reed Hall
- 04/20/99 HOUSE Comm Action -Unanimously Favorable by Health & Human Services Appropriations (FRC) -HJ 00752
- 04/21/99 HOUSE Placed on Calendar -HJ 00752
- 04/23/99 HOUSE Placed on Special Order Calendar; Read second time -HJ 00951, Amendment(s) adopted -HJ 00951, Read third time -HJ 00952, Passed as amended, YEAS 88 NAYS 28 -HJ 00952
- 04/23/99 SENATE In Messages
- 04/27/99 SENATE Received, referred to Comprehensive Planning, Local and Military Affairs, Fiscal Resource -SJ 01224
- 04/30/99 SENATE Died in Committee on Comprehensive Planning, Local and Military Affairs

H 387 GENERAL BILL by Crow; (CO-SPONSORS) Lacasa, Barreiro; Fasano; Crist; Murman; Argenziano; Gottlieb; Greenstein; Sobel; Ogles; Rayson; Cosgrove; Benae (Similar S 0218)

- Health Care Service Programs, establishes exclusive liability of HMOs, provides application, revises award of attorney's fees in civil actions under certain circumstances, specifies additional practices as unfair methods of competition or unfair or deceptive acts or practices, authorizes civil actions against HMOs by certain persons in certain circumstances, provides requirements & procedures, requires advance posting of discovery costs, etc . Amends 440 11, 641 28, 3903, 3917 Appropriation \$112,000 Effective Date 07/01/1999
- 01/26/99 HOUSE Prefiled
 - 02/03/99 HOUSE Referred to Health Care Services (HFC), Judiciary (CJC), Insurance (CAC), General Government Appropriations (FRC)
 - 02/19/99 HOUSE On Committee agenda—Health Care Services (HFC), 03/01/99, 1 00 pm, Reed Hall—Discussed
 - 03/02/99 HOUSE Introduced, referred to Health Care Services (HFC), Judiciary (CJC), Insurance (CAC), General Government Appropriations (FRC) -HJ 00044, On Committee agenda—Health Care Services (HFC), 03/01/99, 1 00 pm, Reed Hall—Discussed
 - 03/09/99 HOUSE On Committee agenda—Health Care Services (HFC), 03/11/99, 9 00 am, Reed Hall—Temporarily deferred
 - 03/16/99 HOUSE On Committee agenda—Health Care Services (HFC), 03/18/99, 10 00 am, Reed Hall—Not considered
 - 03/19/99 HOUSE On Committee agenda—Health Care Services (HFC), 03/23/99, 10 00 am, Reed Hall—Temporarily deferred
 - 04/30/99 HOUSE Died in Committee on Health Care Services (HFC)

H 389 GENERAL BILL/CS by Judiciary (CJC); Cantens, (CO-SPONSORS) Villalobos; Barreiro; Kyle; Russell; C. Green; Wilson, Fiorentino; Prieguez; Byrd, Crist (Similar CS/1ST ENG/S 0748)

- Trooper Robert Smith Act, permits court to order pretrial detention under specified circumstances when it finds substantial probability that defendant committed charged crime of DUI manslaughter as defined by provision re DUI, & that defendant poses threat of harm to community, authorizes court to detain defendant at bail hearing without separate hearing or motion for pretrial detention, etc Amends 903 31, 907 041, reenacts 790 065(2)(c), 943 0585, 059 Effective Date 10/01/1999 except as otherwise provided

(CONTINUED ON NEXT PAGE)

HISTORY OF HOUSE BILLS

H 415 (CONTINUED)

04/26/99 SENATE In Messages, Received, referred to Criminal Justice, Fiscal Policy—SJ 00891, Immediately withdrawn from Criminal Justice, Fiscal Policy—SJ 00858, Substituted for CS/SB 1308—SJ 00858, Read second and third times—SJ 00858, Passed, YEAS 39 NAYS 0—SJ 00858

04/26/99 HOUSE Ordered enrolled—HJ 01145

06/04/99 Signed by Officers and presented to Governor

06/18/99 Approved by Governor; Chapter No 99—383

H 417 GENERAL BILL/CS/1ST ENG by Real Property & Probate (CJC); J. Miller; Constantine; (CO-SPONSORS) Goodlette; Kilmer; Patterson; Detert; Posey; Melvin; Brown; Ogles; Lynn (Identical CS/S 1072, Compare H 2169, S 2566)

Real Estate Brokers & Salespersons, provides regulatory exemption for certain registered securities dealers & financial institutions in connection with certain transactions, provides ground for discipline re designation of salespersons as single agents for different customers in certain transactions, provides penalties, revises intent of Brokerage Relationship Disclosure Act to eliminate required disclosure of nonrepresentation, etc. Amends Ch 475 Effective Date 10/01/1999

01/26/99 HOUSE Prefiled

02/03/99 HOUSE Referred to Business Regulation & Consumer Affairs (CAC), Real Property & Probate (CJC)

03/01/99 HOUSE On Committee agenda—Business Regulation & Consumer Affairs (CAC), 03/03/99, 10 00 am, 413C

03/02/99 HOUSE Introduced, referred to Business Regulation & Consumer Affairs (CAC), Real Property & Probate (CJC)—HJ 00046, On Committee agenda—Business Regulation & Consumer Affairs (CAC), 03/03/99, 10 00 am, 413C—Temporarily deferred

03/08/99 HOUSE On Committee agenda—Business Regulation & Consumer Affairs (CAC), 03/11/99, 1 00 pm, 413C

03/11/99 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Business Regulation & Consumer Affairs (CAC)—HJ 00316

03/15/99 HOUSE Now in Real Property & Probate (CJC)—HJ 00316

03/16/99 HOUSE On Committee agenda—Real Property & Probate (CJC), 03/18/99, 1 30 pm, 314—HOB

03/18/99 HOUSE Comm Action Unanimously CS by Real Property & Probate (CJC)—HJ 00402

03/25/99 HOUSE CS read first time on 03/25/99—HJ 00401, Pending review of CS under Rule 113, Placed on calendar, available for General Calendar—HJ 00402

04/08/99 HOUSE Placed on Special Order Calendar, Retained on Calendar

04/13/99 HOUSE Placed on Special Order Calendar; Read second time—HJ 00562, Amendment(s) adopted—HJ 00562

04/15/99 HOUSE Read third time—HJ 00589, CS passed as amended, YEAS 117 NAYS 0—HJ 00589

04/21/99 SENATE In Messages

04/26/99 SENATE Received, referred to Regulated Industries—SJ 00891, Immediately withdrawn from Regulated Industries—SJ 00859, Substituted for CS/SB 1072—SJ 00859, Read second time—SJ 00859

04/27/99 SENATE Read third time—SJ 01165, CS passed, YEAS 39 NAYS 0—SJ 01165

04/27/99 HOUSE Ordered enrolled—HJ 01479

06/04/99 Signed by Officers and presented to Governor

06/18/99 Approved by Governor, Chapter No 99—384

H 419 GENERAL BILL by Levine (Similar S 1860, Compare 1ST ENG/H 2185, CS/S 1258)

Medical Malpractice/Arbitration, revises language re voluntary binding arbitration of medical malpractice claims, provides for effect of offer to submit to voluntary binding arbitration re allegations contained in claimant's notice of intent letter, revises language re arbitration panel & qualifications of arbitrators, increases rate of compensation for medical negligence claims arbitrators, increases certain damage award limits, etc. Amends 766 207, 209 Effective Date 07/01/1999

01/26/99 HOUSE Prefiled

02/03/99 HOUSE Referred to Judiciary (CJC), Insurance (CAC), Health Care Services (HFC)

03/02/99 HOUSE Introduced, referred to Judiciary (CJC), Insurance (CAC), Health Care Services (HFC)—HJ 00046

03/05/99 HOUSE On Committee agenda—Judiciary (CJC), 03/09/99, 1 00 pm, Morris Hall—Workshop—Discussed

04/13/99 HOUSE Withdrawn from Judiciary (CJC), Insurance (CAC), Health Care Services (HFC), Withdrawn from further consideration—HJ 00555

H 421 GENERAL BILL/CS by Crime & Punishment (CRC), Lacasa, Hart; (CO-SPONSORS) Lynn (Similar S 0902, Compare H 0485, CS/S 0054, CS/S 2188)

H 421 (CONTINUED)

Voluntary Intoxication/Defense, (THIS BILL COMBINES H421,485) provides that evidence of voluntary intoxication is not admissible for certain purposes, provides exception Effective Date 10/01/1999

01/26/99 HOUSE Prefiled

02/03/99 HOUSE Referred to Crime & Punishment (CRC), Judiciary (CJC)

02/23/99 HOUSE On Committee agenda—Crime & Punishment (CRC), 03/03/99, 1 00 pm, 214C

03/02/99 HOUSE Introduced, referred to Crime & Punishment (CRC), Judiciary (CJC)—HJ 00046, On Committee agenda—Crime & Punishment (CRC), 03/03/99, 1 00 pm, 214C

03/03/99 HOUSE CS combines this bill with 485, Comm Action CS by Crime & Punishment (CRC)—HJ 00317

03/16/99 HOUSE CS read first time on 03/16/99—HJ 00313

03/15/99 HOUSE Reference(s) rescinded Judiciary (CJC), Pending review of CS under Rule 113

03/16/99 HOUSE CS referred to Judiciary (CJC)—HJ 00317

03/26/99 HOUSE On Committee agenda—Judiciary (CJC), 03/30/99, 4 00 pm, Morris Hall

03/30/99 HOUSE Comm Action—Unanimously Favorable by Judiciary (CJC)—HJ 00511

04/01/99 HOUSE Placed on Calendar—HJ 00511

04/08/99 HOUSE Placed on Special Order Calendar; Retained on Calendar

04/13/99 HOUSE Placed on Special Order Calendar; Read second time—HJ 00569

04/15/99 HOUSE Read third time—HJ 00591, CS passed, YEAS 118 NAYS 0—HJ 00591

04/21/99 SENATE In Messages

04/22/99 SENATE Received, referred to Criminal Justice, Fiscal Policy—SJ 00712, Immediately withdrawn from Criminal Justice, Fiscal Policy—SJ 00675, Substituted for CS/SB 54—SJ 00675, Read second time—SJ 00675

04/23/99 SENATE Read third time—SJ 00789; CS passed, YEAS 39 NAYS 0—SJ 00789, Immediately certified—SJ 00789

04/23/99 HOUSE Ordered enrolled—HJ 01089

04/29/99 Signed by Officers and presented to Governor—HJ 01893

05/14/99 Approved by Governor; Chapter No 99—174

H 423 GENERAL BILL/CS/1ST ENG by Crime & Punishment (CRC); Argenziano; (CO-SPONSORS) Crist; Brown; Harrington (Identical CS/S 0198)

Trial Testimony/Sexual Offenses, requires that court clear courtroom at request of victim during his or her testimony concerning sexual offense, regardless of victim's age or mental capacity, provides certain exceptions Amends 918 16 Effective Date 07/01/1999

01/27/99 HOUSE Prefiled

02/03/99 HOUSE Referred to Judiciary (CJC), Crime & Punishment (CRC)

02/05/99 HOUSE On Committee agenda—Judiciary (CJC), 02/17/99, 1 00 pm, Morris Hall

02/17/99 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Judiciary (CJC)

02/22/99 HOUSE Now in Crime & Punishment (CRC)

03/02/99 HOUSE Introduced, referred to Judiciary (CJC), Crime & Punishment (CRC)—HJ 00046, On Committee agenda—Judiciary (CJC), 02/17/99, 1 00 pm, Morris Hall, Comm Action Unanimously Favorable with 1 amendment(s) by Judiciary (CJC)—HJ 00105, Now in Crime & Punishment (CRC)—HJ 00105

03/04/99 HOUSE On Committee agenda—Crime & Punishment (CRC), 03/09/99, 1 00 pm, 214C

03/09/99 HOUSE Comm Action—Unanimously CS by Crime & Punishment (CRC)—HJ 00382

03/24/99 HOUSE CS read first time on 03/24/99—HJ 00378

03/18/99 HOUSE Pending review of CS under Rule 113

03/22/99 HOUSE Placed on calendar, available for General Calendar—HJ 00382

03/30/99 HOUSE Placed on Special Order Calendar, Read second time—HJ 00473

04/06/99 HOUSE Read third time—HJ 00492, Amendment(s) adopted—HJ 00492, CS passed as amended, YEAS 117 NAYS 0—HJ 00493

04/08/99 SENATE In Messages

04/13/99 SENATE Received, referred to Judiciary—SJ 00519

04/30/99 SENATE Died in Committee on Judiciary, Ident/Sim/Compare Bill(s) passed, refer to CS/SB 198 (Ch 99—157)

H 425 GENERAL BILL/CS/1ST ENG by Judiciary (CJC); Sanderson, (CO-SPONSORS) Fasano; Bloom; Crist; Kelly; Villalobos; Harrington (Similar CS/S 0772)

HISTORY OF HOUSE BILLS

H 481 GENERAL BILL by Murman, (CO-SPONSORS) Kelly (Compare H 1879, CS/CS/1ST ENG/S 0338, 1ST ENG/S 0928)
Karla McKean Child Protection Act, creates said act & provides legislative intent Effective Date Upon becoming law
 01/27/99 HOUSE Prefiled
 02/04/99 HOUSE Referred to Family Law & Children (CJC); Children & Families (HFC), Health & Human Services Appropriations (FRC)
 03/02/99 HOUSE Introduced, referred to Family Law & Children (CJC), Children & Families (HFC), Health & Human Services Appropriations (FRC) -HJ 00049
 03/16/99 HOUSE On Committee agenda—Family Law & Children (CJC), 03/18/99, 1 00 pm, 317C
 03/18/99 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Family Law & Children (CJC) -HJ 00384
 03/22/99 HOUSE Now in Children & Families (HFC) -HJ 00384
 03/30/99 HOUSE Withdrawn from Children & Families (HFC) -HJ 00449, Now in Health & Human Services Appropriations (FRC)
 04/14/99 HOUSE On Committee agenda—Health & Human Services Appropriations (FRC), 04/16/99, 9 30 am, Reed Hall
 04/16/99 HOUSE Comm. Action -Unanimously Favorable with 1 amendment(s) by Health & Human Services Appropriations (FRC) -HJ 00751
 04/20/99 HOUSE Placed on calendar, available for General Calendar -HJ 00751
 04/30/99 HOUSE Died on Calendar, Iden./Sim/Compare Bill(s) passed, refer to CS/CS/SB 338 (Ch 99-168), SB 928 (Ch 99-210)

H 483 GENERAL BILL by Wallace (Similar CS/S 1922)
University System/Professorships, establishes industrial partnership professorships as classification of instructional personnel within State University System, specifies length of term for such contract, provides for credit against corporate income tax for contributions made by sponsoring corporation, provides credit against corporate income tax for contributions made by corporation sponsoring industrial partnership professorship, etc Amends Ch. 220, creates 240 6065 Effective Date Upon becoming law
 01/27/99 HOUSE Prefiled
 02/04/99 HOUSE Referred to Colleges & Universities (AEC), Finance & Taxation (FRC), Education Appropriations (FRC)
 03/01/99 HOUSE On Committee agenda—Colleges & Universities (AEC), 03/03/99, 3 30 pm, 413C
 03/02/99 HOUSE Introduced, referred to Colleges & Universities (AEC); Finance & Taxation (FRC), Education Appropriations (FRC) -HJ 00049, On Committee agenda—Colleges & Universities (AEC), 03/03/99, 3 30 pm, 413C
 03/03/99 HOUSE Comm Action Unanimously Favorable with 2 amendment(s) by Colleges & Universities (AEC) -HJ 00251
 03/05/99 HOUSE Now in Finance & Taxation (FRC) -HJ 00251
 04/30/99 HOUSE Died in Committee on Finance & Taxation (FRC)

H 485 GENERAL BILL by Hart (Similar CS/S 0054, Compare CS/1ST ENG/H 0381, CS/H 0421, S 0902, CS/S 2188)
Criminal Law, (THIS BILL COMBINED IN CS/H421,485) prohibits consideration of evidence of defendant's voluntary intoxication to determine existence of mental state that is element of crime, requires that enhanced penalty be imposed if victim of felony is related by lineal consanguinity to defendant or is defendant's legal guardian Creates 90 4051, 775 0852 Effective Date 07/01/1999
 01/27/99 HOUSE Prefiled
 02/04/99 HOUSE Referred to Crime & Punishment (CRC), Judiciary (CJC), Criminal Justice Appropriations (FRC)
 02/23/99 HOUSE On Committee agenda—Crime & Punishment (CRC), 03/03/99 1 00 pm, 214C
 03/02/99 HOUSE Introduced, referred to Crime & Punishment (CRC), Judiciary (CJC), Criminal Justice Appropriations (FRC) -HJ 00049, On Committee agenda—Crime & Punishment (CRC), 03/09/99, 1 00 pm, 214C
 03/03/99 HOUSE (S combines this bill with 421, Comm Action CS by Crime & Punishment (CRC)
 03/15/99 HOUSE Original bill laid on Table, refer to combined CS/HB 421 (Ch 99-174)

H 487 GENERAL BILL by Hafner, (CO-SPONSORS) Sanderson, Greenstein (Identical S 0658)
Developmental Disabilities Services, provides for developmental services waiver programs, requires Medicaid provider agreements, provides for rule-making, authorizes CFS Dept to accept inspections by accrediting organizations in lieu of its own inspections for licensure, provides for life-safety & other type inspections Creates 393 0661 Effective Date Upon becoming law
 01/27/99 HOUSE Prefiled

H 487 (CONTINUED)
 02/04/99 HOUSE Referred to Health Care Services (HFC), Governmental Rules & Regulations (PRC), Health & Human Services Appropriations (FRC)
 03/02/99 HOUSE Introduced, referred to Health Care Services (HFC), Governmental Rules & Regulations (PRC), Health & Human Services Appropriations (FRC) -HJ 00049
 04/30/99 HOUSE Died in Committee on Health Care Services (HFC)

H 489 GENERAL BILL/1ST ENG by Valdes; (CO-SPONSORS) Suarez; Bloom; Brown (Similar CS/CS/S 0950)
Body-piercing Salons, provides for regulation of body-piercing salons by Health Dept., provides definitions & exemptions; requires license to operate said salon & temporary license to operate temporary establishment, provides licensing procedures & fees, provides requirements re body piercing of minors, provides for injunction, enforcement, & rulemaking authority, provides specific requirements for operation of said salons, etc Creates 381 0075 Effective Date 10/01/1999
 01/27/99 HOUSE Prefiled
 02/04/99 HOUSE Referred to Health Care Licensing & Regulation (HFC), Business Regulation & Consumer Affairs (CAC), Governmental Rules & Regulations (PRC), Health & Human Services Appropriations (FRC)
 03/02/99 HOUSE Introduced, referred to Health Care Licensing & Regulation (HFC), Business Regulation & Consumer Affairs (CAC), Governmental Rules & Regulations (PRC), Health & Human Services Appropriations (FRC) -HJ 00049
 03/09/99 HOUSE On Committee agenda—Health Care Licensing & Regulation (HFC), 03/11/99, 9 00 am, Morris Hall
 03/11/99 HOUSE Comm. Action Favorable by Health Care Licensing & Regulation (HFC) -HJ 00317
 03/16/99 HOUSE Now in Business Regulation & Consumer Affairs (CAC) -HJ 00317
 03/18/99 HOUSE On Committee agenda—Business Regulation & Consumer Affairs (CAC), 03/22/99, 1 00 pm, 413C
 03/22/99 HOUSE Comm Action Unanimously Favorable by Business Regulation & Consumer Affairs (CAC) -HJ 00386
 03/23/99 HOUSE Now in Governmental Rules & Regulations (PRC) -HJ 00386
 03/26/99 HOUSE On Committee agenda—Governmental Rules & Regulations (PRC), 03/30/99, 1 30 pm, 116K
 03/30/99 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Governmental Rules & Regulations (PRC) -HJ 00512
 04/01/99 HOUSE Now in Health & Human Services Appropriations (FRC) -HJ 00512
 04/07/99 HOUSE On Committee agenda—Health & Human Services Appropriations (FRC), 04/09/99, 9 45 am, Reed Hall
 04/09/99 HOUSE Comm Action -Unanimously Favorable by Health & Human Services Appropriations (FRC) -HJ 00580
 04/12/99 HOUSE Placed on Calendar -HJ 00580
 04/22/99 HOUSE Placed on Special Order Calendar, Read second time -HJ 00820, Amendment(s) adopted -HJ 00820, Read third time -HJ 00820, Passed as amended, YEAS 113 NAYS 2 -HJ 00820
 04/22/99 SENATE In Messages, Received, referred to Health, Aging and Long-Term Care, Governmental Oversight and Productivity -SJ 00712, Immediately withdrawn from Health, Aging and Long-Term Care, Governmental Oversight and Productivity -SJ 00687, Substituted for CS/CS/SE 980 -SJ 00687, Read second time -SJ 00687
 04/23/99 SENATE Read third time -SJ 00790, Passed, YEAS 40 NAYS 0 -SJ 00790, Immediately certified -SJ 00790
 04/23/99 HOUSE Ordered enrolled -HJ 01089
 04/29/99 Signed by Officers and presented to Governor -HJ 01893
 05/14/99 Approved by Governor, Chapter No 99-176

H 491 GENERAL BILL by Ball (Compare CS/H 0223, S 1076)
Litigation Settlements/Municipal, revises Sunshine in Litigation Act to remove exception for certain municipal or county settlements, repeals provision re public hearing or meeting before settlement re certain municipal or county settlements Amends 69 081, repeals 164 106 Effective Date 07/01/1999
 01/29/99 HOUSE Prefiled
 02/04/99 HOUSE Referred to Claims (CJC), Community Affairs (PRC)
 03/02/99 HOUSE Introduced, referred to Claims (CJC), Community Affairs (PRC) -HJ 00049
 03/09/99 HOUSE Withdrawn from Claims (CJC), Community Affairs (PRC), Withdrawn from further consideration Iden./Sim/Compare Bill(s) passed, refer to CS/HB 223 (Ch 99-279) -HJ 00182

By Senator Lee

23-66-99

1 A bill to be entitled
2 An act relating to criminal law; creating s.
3 90.4051, F.S.; prohibiting consideration of
4 evidence of a defendant's voluntary
5 intoxication to determine the existence of a
6 mental state that is an element of a crime;
7 creating s. 775.0852, F.S.; requiring that an
8 enhanced penalty be imposed if the victim of a
9 felony is related by lineal consanguinity to
10 the defendant or is the defendant's legal
11 guardian; providing an effective date.

12
13 WHEREAS, in Montana v. Egelhoff, 116 S.Ct. 2013 (1996),
14 the United States Supreme Court held that the Due Process
15 Clause of the Fourteenth Amendment was not violated by a
16 Montana law barring a jury in a criminal proceeding from
17 considering evidence of a defendant's voluntary intoxication
18 in determining the existence of a mental state that is an
19 element of a crime, and

20 WHEREAS, the court stated that a prohibition on such
21 evidence: accords with studies indicating that as many as half
22 of all homicides are committed by intoxicated offenders and
23 suggesting that drunks behave in accord with learned beliefs
24 that drunks are violent; deters drunkenness or irresponsible
25 behavior while drunk; ensures that persons incapable of
26 controlling violent impulses while intoxicated will go to
27 prison; and comports with and implements society's moral
28 perception that those who are voluntarily impaired shall be
29 responsible for the consequences of their impairment, and

30 WHEREAS, the Legislature finds that a prohibition on
31 such evidence advances the public interest in holding a

1 defendant accountable for his or her criminal behavior, while
2 also comporting with the defendant's right to due process of
3 law, and

4 WHEREAS, it is the intent of the Legislature to
5 prohibit a jury from considering evidence of a defendant's
6 voluntary intoxicated condition in determining whether he or
7 she possesses the requisite mental state to commit the crime
8 for which he or she is charged, NOW, THEREFORE,

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 90.4051, Florida Statutes, is
13 created to read:

14 90.4051 Responsibility; intoxication.--

15 (1) Notwithstanding s. 90.803 or any other law, a
16 person who is voluntarily in an intoxicated condition is
17 criminally responsible for his conduct. Voluntary intoxication
18 is not a defense to any offense and may not be taken into
19 consideration in determining the existence of a mental state
20 that is an element of the offense. If the defendant, outside
21 the presence of the jury, proves to the court by a
22 preponderance of the evidence that he or she did not know that
23 a substance was an intoxicating substance when he or she
24 consumed, smoked, inhaled, injected, or otherwise ingested the
25 intoxicating substance, the court may allow the evidence to be
26 submitted to the jury or considered by the court.

27 (2) As used in this section, the term "intoxicating
28 substance" means a substance capable of producing
29 intoxication, and the term "intoxication" means a disturbance
30 of physical or mental capacities resulting from the
31 introduction of a substance into the body.

1 Section 2. Section 775.0852, Florida Statutes, is
2 created to read:

3 775.0852 Felony committed against a family member;
4 enhanced penalties.--The penalty for any felony shall be
5 reclassified as provided in this section if the victim of the
6 felony is related by lineal consanguinity to the defendant or
7 if the victim is the defendant's legal guardian.

8 (1) A felony of the third degree shall be punishable
9 as if it were a felony of the second degree.

10 (2) A felony of the second degree shall be punishable
11 as if it were a felony of the first degree.

12 (3) A felony of the first degree shall be punishable
13 as if it were a life felony.

14 Section 3. This act shall take effect July 1, 1999.

15
16 *****

17 SENATE SUMMARY

18 Provides that voluntary intoxication is not a defense to
19 any criminal charge and may not be taken into
20 consideration in determining the existence of a mental
21 state that is an element of the offense. Provides for a
22 showing and introduction of evidence that the accused was
23 unaware, at the time of its ingestion, that a substance
24 is intoxicating. Provides for the penalty imposed for a
25 felony offense to be enhanced by one degree if the victim
26 of the felony is related by lineal consanguinity to the
27 defendant or if the victim is the defendant's legal
28 guardian.
29
30
31

By the Committee on Criminal Justice and Senators Lee and Silver

307-1695-99

1 A bill to be entitled
2 An act relating to criminal law; creating s.
3 90.4051, F.S.; prohibiting consideration of
4 evidence of a defendant's voluntary
5 intoxication to determine the existence of a
6 mental state that is an element of a crime;
7 creating s. 775.0852, F.S.; requiring that an
8 enhanced penalty be imposed if the victim of a
9 felony is related by lineal consanguinity to
10 the defendant or is the defendant's legal
11 guardian; providing an effective date.

12
13 WHEREAS, in Montana v. Egelhoff, 116 S.Ct. 2013 (1996),
14 the United States Supreme Court held that the Due Process
15 Clause of the Fourteenth Amendment was not violated by a
16 Montana law barring a jury in a criminal proceeding from
17 considering evidence of a defendant's voluntary intoxication
18 in determining the existence of a mental state that is an
19 element of a crime, and

20 WHEREAS, the court stated that a prohibition on such
21 evidence: accords with studies indicating that as many as half
22 of all homicides are committed by intoxicated offenders and
23 suggesting that drunks behave in accord with learned beliefs
24 that drunks are violent; deters drunkenness or irresponsible
25 behavior while drunk; ensures that persons incapable of
26 controlling violent impulses while intoxicated will go to
27 prison; and comports with and implements society's moral
28 perception that those who are voluntarily impaired shall be
29 responsible for the consequences of their impairment, and

30 WHEREAS, the Legislature finds that a prohibition on
31 such evidence advances the public interest in holding a

1 defendant accountable for his or her criminal behavior, while
2 also comporting with the defendant's right to due process of
3 law, and

4 WHEREAS, it is the intent of the Legislature to
5 prohibit a jury from considering evidence of a defendant's
6 voluntary intoxicated condition in determining whether he or
7 she possesses the requisite mental state to commit the crime
8 for which he or she is charged, NOW, THEREFORE,

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 90.4051, Florida Statutes, is
13 created to read:

14 90.4051 Responsibility; intoxication.--

15 (1) Notwithstanding s. 90.803 or any other law, a
16 person who is voluntarily in an intoxicated condition is
17 criminally responsible for his conduct. Voluntary intoxication
18 is not a defense to any offense and may not be taken into
19 consideration in determining the existence of a mental state
20 that is an element of the offense. If the defendant, outside
21 the presence of the jury, proves to the court by a
22 preponderance of the evidence that he or she did not know that
23 a substance was an intoxicating substance when he or she
24 consumed, smoked, inhaled, injected, or otherwise ingested the
25 intoxicating substance, the court may allow the evidence to be
26 submitted to the jury or considered by the court.

27 (2) As used in this section, the term "intoxicating
28 substance" means a substance capable of producing
29 intoxication, and the term "intoxication" means a disturbance
30 of physical or mental capacities resulting from the
31 introduction of a substance into the body.

1 Section 2. Section 775.0852, Florida Statutes, is
2 created to read:

3 775.0852 Felony committed against a family member;
4 enhanced penalties.--The penalty for any felony shall be
5 reclassified as provided in this section if the victim of the
6 felony is related by lineal consanguinity to the defendant or
7 if the victim is the defendant's legal guardian.

8 (1) A felony of the third degree shall be punishable
9 as if it were a felony of the second degree.

10 (2) A felony of the second degree shall be punishable
11 as if it were a felony of the first degree.

12 (3) A felony of the first degree shall be punishable
13 as if it were a life felony.

14 Section 3. This act shall take effect July 1, 1999.

15
16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 Senate Bills 54 and 902

19 - Combines SB 54 and SB 902, as amended to make SB 902
20 consistent with SB 54.

21 - Bans voluntary intoxication defense consistent with SB
22 54 and SB 902, as amended.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below)

BILL CS/SBs 54 & 902

SPONSOR Criminal Justice Committee and Senators Lee and Silver

SUBJECT Criminal Law

DATE March 4, 1999 REVISED _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bills 54 and 902 prohibits the use of voluntary intoxication as a defense to a prosecution for any criminal offense. Voluntary intoxication may not be considered in determining the existence of a mental state that is an element of the criminal offense. However, if the defendant, outside the presence of the jury, proves to the court by a preponderance of the evidence that he or she did not know that a substance taken was an intoxicating substance, the court may allow the evidence to be submitted to the jury or considered by the court.

Committee Substitute for Senate Bills 54 and 902 also provides for the reclassification of any felony offense to the next, higher felony degree if the victim of the felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian.

This CS creates the following sections of the Florida Statutes: 90.4051; 775.0852.

II. Present Situation:

A. Voluntary Intoxication

Florida's Evidence Code currently deems all relevant evidence to be admissible, except as provided by law pursuant to s. 90.402, F.S. Relevant evidence is defined as evidence that tends to prove or disprove a material fact. Relevant evidence has a tendency to establish a fact in controversy or to render a proposition more or less probable. See *Zabner v Howard Johnson's Inc. of Florida*, 227 So.2d 543 (Fla. 4th DCA 1969)

However, not all relevant evidence is admissible in Florida. Relevant evidence may be excluded by Florida's Evidence Code, the Rules of Civil and Criminal Procedure, other acts of the United States Congress, or the Florida Legislature. Currently, there are several instances in which certain evidence is not admissible in Florida courts. For example, relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues,

misleading the jury, or needless presentation of cumulative evidence under s. 90.403, F.S. For this type of exclusion of evidence, the trial court must use its discretion to determine whether the probative value of relevant evidence outweighs any unfair prejudices or confusion by the fact-finder.

There are other instances where otherwise relevant evidence is inadmissible in Florida's courts. For instance, Florida recognizes a number of "privileged" relationships from which otherwise relevant information would be inadmissible in court. Examples of such privileges include attorney-client, husband-wife, communications to clergy, and psychotherapist-patient privileges. Each has its own unique requirements or qualifications to be deemed "privileged" communications and, thus, inadmissible in court. Hearsay evidence is also inadmissible evidence in court unless otherwise provided by statute pursuant to s. 90.802, F.S. Florida provides for exceptions to the hearsay rule in instances where it does not matter whether the declarant is available and in instances when the declarant is unavailable under ss. 90.803-.804, F.S.

Florida currently allows evidence of intoxication to be offered by a defendant as long as it is deemed relevant by the court. This means that a judge or jury could hear evidence of voluntary intoxication by a criminal defendant if it is relevant to an element of the crime charged, thereby being relevant to the defendant's defense to the crime. Therefore, when the state must prove *mens rea*, or criminal intent, because the crime charged is a specific intent crime or where the defendant's mental state is relevant, it is likely that the court would allow evidence as to voluntary intoxication to be admitted into evidence and considered by the fact-finder in rendering its verdict. See *Frey v State*, 708 So.2d 918 (Fla. 1998).

The state of Montana enacted a law that required a jury to be instructed that a defendant's intoxicated condition could not be considered by the fact-finder in determining the existence of a mental state which is an element of the offense. This law was challenged by a criminal defendant as being in violation of the Due Process Clause of the United States Constitution. In *Montana v. Egelhoff*, the United States Supreme Court upheld the Montana law finding that the restriction on introducing evidence as to voluntary intoxication does not offend a fundamental right. *Montana v Egelhoff*, 518 U.S. 37, 116 S Ct. 2013, 135 L.Ed.2d 361 (1996).

B. Lineal Consanguinity

Florida's Fourth District Court of Appeals, has used the definition of "lineal consanguinity" provided, and the distinction between "lineal consanguinity" and "collateral consanguinity" articulated, in *Black's Law Dictionary* (5th ed. 1979). See *In re Estate of Angeleri*, 575 So 2d 794, 795, n. 1 (Fla 4th DCA 1991).

Black's defines "lineal consanguinity" as "that [blood relationship] which subsists between persons of whom one is descended in a direct line from the other, as between son, father, grandfather, and so upwards in the direct ascending line; or between son, grandson, great-grandson, and so downwards in the direct descending line."

Black's distinguishes "lineal consanguinity" from "collateral consanguinity," which it defines as which *Black's* defines as "that [relationship] which subsists between persons who have the same ancestors, but who do not descend (or ascend) one from the other."

An illustration of the difference provided by *Black's*: “father and son are related by lineal consanguinity, uncle and nephew by collateral consanguinity.”

There are a variety of statutory provisions provided for reclassification of felony offenses to the next, higher felony degree based upon circumstances present during the commission of the offense (e.g., wearing a mask, s. 775.0845, F.S.) or when specified assaults or batteries take place against particular persons (e.g., battery on a law enforcement officer, s. 784.07, F.S. (1998 Supp.)).

Under the Criminal Punishment Code, the court may sentence up to, and including, the maximum penalty provided for the felony degree of the offense for which the defendant is being sentenced. In other words, for a third degree felony, the court may sentence the defendant to the maximum penalty for a third degree felony, which is 5 years; for a second degree felony, 15 years, for a first degree felony, 30 years; for a first degree felony punishable by life or a life felony, for the defendant's natural life. s. 775.082, F.S. (1998 Supp.)

There are currently statutory provisions that provide for enhanced penalties for commission of certain felonies on family members, such as a sexual battery by a person in familial or custodial authority to the victim. See, e.g., s. 794.011(8), F.S. The First District Court of Appeals has stated that it regards “the legislature to have intended, by its use of the words, ‘familial or custodial,’ to include within the statute's proscriptions any person maintaining a close relationship with children of the ages specified in the statute, and who lived in the same household with such children.” *Coleman v. State*, 485 So.2d 1342, 1345 (Fla. 1st DCA 1986). See *State v. Rawls*, 649 So.2d 1350, 1353 (Fla. 1994) (“Consanguinity and affinity are strong indicia of a familial relationship but are not necessary.”)

There is also a provision in the Code that provides for a 1.5 multiplier to total offense points, when the primary offense is an act of domestic violence, committed in the presence of a child under the age of 16, who is a family member of the victim or the perpetrator.

There are also a number of crimes, such as child abuse, lewd and lascivious behavior upon or in the presence of a child under the age of 16, and sexual battery on a minor, that are most often committed upon family members.

Incest under s. 826.04, F.S., “renders felonious marriage or sexual intercourse with a person to whom a defendant ‘is related by lineal consanguinity’” *Hendry v. State*, 571 So.2d 94 (Fla. 2d DCA 1990).

III. Effect of Proposed Changes:

A. Voluntary Intoxication Defense

Committee Substitute for Senate Bills 54 and 902 prohibits evidence of voluntary intoxication to be considered by the fact-finder in determining the existence of a mental state that is an element of the criminal offense. In other words, the CS prohibits the use of voluntary intoxication as a defense to any criminal offense.

Committee Substitute for Senate Bills 54 and 902 allows a defendant, outside the hearing of the jury, to have an opportunity to prove to the court by a preponderance of the evidence that he or she did not know that a substance was an intoxicating substance when he or she consumed, smoked, inhaled, injected, or otherwise ingested the intoxicating substance. If so proven, the court may allow the evidence to be submitted to the jury or considered by the court.

Committee Substitute for Senate Bills 54 and 902 defines the term "intoxicating substance" as a "substance capable of producing intoxication." The term "intoxication" is defined as "a disturbance of physical or mental capacities resulting from the introduction of a substance into the body." By this definition, an intoxicating substance could include harmful substances that have not been classified as controlled substances, e.g. new "designer drugs" that have not been classified as controlled substances by rule or by law. The definition could also include lawfully prescribed medication, unless the defendant proved he or she did not know that the medication taken was an intoxicating substance

Since the CS does not address involuntary intoxication, it appears that a defendant could still raise involuntary intoxication as a defense, e.g., the defendant claims that a drug was placed in his drink without his knowledge

B. Lineal Consanguinity

Committee Substitute for Senate Bills 54 and 902 also provides that the penalty for any felony shall be reclassified as provided if the victim of the felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian. The reclassification is as follows: a third degree felony is punishable as a second degree felony; a second degree felony is punishable as a first degree felony, a first degree felony is punishable as a life felony.

The CS does not specify that physical injury to the victim must be present; therefore, the CS appears to apply to all non-violent felonies, as well, if the victim is related to the defendant by lineal consanguinity or is the defendant's legal guardian.

The CS does not capture for felony reclassification all persons who are sentenced for sexual battery by a person in "familial or custodial authority," since the reach of this offense goes beyond such cases where the victim is related by lineal consanguinity to the perpetrator. The Florida Supreme Court has noted that "[i]n today's society, the parameters of the traditional family have become much less clearly defined. Many children live in situations involving broken homes, where multiple residences and step-parents or live-in partners are the norm." *Saffor v. State*, 660 So.2d 668, 670 (Fla. 1995).

The effect of the escalation of a felony under the Criminal Punishment Code is significant with respect to the maximum penalty. For example, the escalation of a first degree felony by one felony degree can mean the difference between 30 years and the remainder of the defendant's natural life.

Committee Substitute for Senate Bills 54 and 902 does not specifically indicate whether the law, as proposed, is to be read in tandem with other laws, and if so, how it effects sentencing of defendants for incest and for cases in which the victim and the perpetrator are related by lineal consanguinity, and a family relationship requirement is an element of the sentencing offense.

The CS takes effect on July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

In its analysis of SB 54, the Department of Corrections (DOC) notes the Florida Department of Law Enforcement's Annual Report estimates that 8,310 domestic violence felony arrests took place in 1997 where the crime was committed upon a parent, child, or sibling victim (this estimate excludes spouses, cohabitants, and other family members).

The DOC further notes that there were 193 admissions to the department (either to supervision or prison) for commission or solicitation to commit custodial sexual battery (s. 794.011(8)(a) and (b), F.S.); 946 admissions for child abuse (mostly committed by family members or guardians); and 2,040 admissions for lewd, lascivious or indecent assault or act upon or in the presence of a child (mostly committed by family members or guardians). This information is provided by the DOC merely to give a sense of the potential reach of SB 54. It is by no means an inclusive accounting of all violent felonies that may be within the reach of SB 54, nor does it provide any estimate regarding non-violent felony offenses that may be within the reach of SB 54.

The Criminal Justice Estimating Conference (CJEC) has determined that the provision of SB 54 prohibiting the voluntary intoxication defense and the provision of the bill creating the felony reclassification, which are contained, without modification, in CS/SBs 54 and 902 have an indeterminate fiscal impact. The felony reclassification provision will likely result in

longer sentences for persons impacted by the legislation but the CJEC is unable to project with precision the fiscal impact of the legislation because of the considerable discretion in sentencing available under the Criminal Punishment Code.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate

Bill No. CS for SB's 54 & 902

Amendment No. 1

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Fiscal Policy recommended the following amendment:

Senate Amendment

On page 3, lines 3-13, delete all of those lines

and insert:

775.082 Felony committed against a family member; enhanced penalties--

(1) Except as provided in subsection (2), the penalty for any forcible felony, as defined in s. 776.08, shall be reclassified as provided in this section if the victim is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian.

(a) A felony of the third degree shall be punishable as if it were a felony of the second degree.

(b) A felony of the second degree shall be punishable as if it were a felony of the first degree.

(c) A felony of the first degree shall be punishable as if it were a life felony.

(2) This section shall not apply to:

Bill No. CS for SB's 54 & 902

Amendment No. 1

- 1 (a) A sexual battery under s. 794.011(8);
- 2 (b) Incest under s. 826.04;
- 3 (c) Any forcible felony in which lineal consanguinity
- 4 is an element of the offense;
- 5 (d) Any offense in which the victim's relationship to
- 6 the defendant would be subject to a greater penalty under
- 7 another section.
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below)

BILL CS/SBs 54 & 902

SPONSOR. Criminal Justice Committee and Senators Lee and Silver

SUBJECT Criminal Law

DATE March 4, 1999 REVISED 3/24/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Mannelli</u>	<u>Hadi</u>	<u>FP</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bills 54 and 902 prohibits the use of voluntary intoxication as a defense to a prosecution for any criminal offense. Voluntary intoxication may not be considered in determining the existence of a mental state that is an element of the criminal offense. However, if the defendant, outside the presence of the jury, proves to the court by a preponderance of the evidence that he or she did not know that a substance taken was an intoxicating substance, the court may allow the evidence to be submitted to the jury or considered by the court.

Committee Substitute for Senate Bills 54 and 902 also provides for the reclassification of any felony offense to the next, higher felony degree if the victim of the felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian

This CS creates the following sections of the Florida Statutes: 90.4051; 775.0852.

II. Present Situation:

A. Voluntary Intoxication

Florida's Evidence Code currently deems all relevant evidence to be admissible, except as provided by law pursuant to s. 90 402, F.S. Relevant evidence is defined as evidence that tends to prove or disprove a material fact. Relevant evidence has a tendency to establish a fact in controversy or to render a proposition more or less probable. See *Zabner v. Howard Johnson's Inc. of Florida*, 227 So.2d 543 (Fla. 4th DCA 1969).

However, not all relevant evidence is admissible in Florida. Relevant evidence may be excluded by Florida's Evidence Code, the Rules of Civil and Criminal Procedure, other acts of the United States Congress, or the Florida Legislature. Currently, there are several instances in which certain evidence is not admissible in Florida courts. For example, relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues,

misleading the jury, or needless presentation of cumulative evidence under s. 90.403, F.S. For this type of exclusion of evidence, the trial court must use its discretion to determine whether the probative value of relevant evidence outweighs any unfair prejudices or confusion by the fact-finder.

There are other instances where otherwise relevant evidence is inadmissible in Florida's courts. For instance, Florida recognizes a number of "privileged" relationships from which otherwise relevant information would be inadmissible in court. Examples of such privileges include attorney-client, husband-wife, communications to clergy, and psychotherapist-patient privileges. Each has its own unique requirements or qualifications to be deemed "privileged" communications and, thus, inadmissible in court. Hearsay evidence is also inadmissible evidence in court unless otherwise provided by statute pursuant to s. 90.802, F.S. Florida provides for exceptions to the hearsay rule in instances where it does not matter whether the declarant is available and in instances when the declarant is unavailable under ss. 90.803- 804, F.S.

Florida currently allows evidence of intoxication to be offered by a defendant as long as it is deemed relevant by the court. This means that a judge or jury could hear evidence of voluntary intoxication by a criminal defendant if it is relevant to an element of the crime charged, thereby being relevant to the defendant's defense to the crime. Therefore, when the state must prove *mens rea*, or criminal intent, because the crime charged is a specific intent crime or where the defendant's mental state is relevant, it is likely that the court would allow evidence as to voluntary intoxication to be admitted into evidence and considered by the fact-finder in rendering its verdict. See *Frey v State*, 708 So.2d 918 (Fla. 1998).

The state of Montana enacted a law that required a jury to be instructed that a defendant's intoxicated condition could not be considered by the fact-finder in determining the existence of a mental state which is an element of the offense. This law was challenged by a criminal defendant as being in violation of the Due Process Clause of the United States Constitution. In *Montana v. Egelhoff*, the United States Supreme Court upheld the Montana law finding that the restriction on introducing evidence as to voluntary intoxication does not offend a fundamental right. *Montana v. Egelhoff*, 518 U.S. 37, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996).

B. Lineal Consanguinity

Florida's Fourth District Court of Appeals, has used the definition of "lineal consanguinity" provided, and the distinction between "lineal consanguinity" and "collateral consanguinity" articulated, in *Black's Law Dictionary* (5th ed. 1979). See *In re Estate of Angeleri*, 575 So.2d 794, 795, n. 1 (Fla. 4th DCA 1991).

Black's defines "lineal consanguinity" as "that [blood relationship] which subsists between persons of whom one is descended in a direct line from the other, as between son, father, grandfather, and so upwards in the direct ascending line; or between son, grandson, great-grandson, and so downwards in the direct descending line."

Black's distinguishes "lineal consanguinity" from "collateral consanguinity," which it defines as which *Black's* defines as "that [relationship] which subsists between persons who have the same ancestors, but who do not descend (or ascend) one from the other."

An illustration of the difference provided by *Black*'s: "father and son are related by lineal consanguinity, uncle and nephew by collateral consanguinity."

There are a variety of statutory provisions provided for reclassification of felony offenses to the next, higher felony degree based upon circumstances present during the commission of the offense (e.g., wearing a mask, s. 775.0845, F.S.) or when specified assaults or batteries take place against particular persons (e.g., battery on a law enforcement officer, s. 784.07, F.S. (1998 Supp.)).

Under the Criminal Punishment Code, the court may sentence up to, and including, the maximum penalty provided for the felony degree of the offense for which the defendant is being sentenced. In other words, for a third degree felony, the court may sentence the defendant to the maximum penalty for a third degree felony, which is 5 years; for a second degree felony, 15 years; for a first degree felony, 30 years; for a first degree felony punishable by life or a life felony, for the defendant's natural life. s. 775.082, F.S. (1998 Supp.)

There are currently statutory provisions that provide for enhanced penalties for commission of certain felonies on family members, such as a sexual battery by a person in familial or custodial authority to the victim. See, e.g., s. 794.011(8), F.S. The First District Court of Appeals has stated that it regards "the legislature to have intended, by its use of the words, 'familial or custodial,' to include within the statute's proscriptions any person maintaining a close relationship with children of the ages specified in the statute, and who lived in the same household with such children." *Coleman v State*, 485 So.2d 1342, 1345 (Fla. 1st DCA 1986). See *State v Rawls*, 649 So.2d 1350, 1353 (Fla. 1994) ("Consanguinity and affinity are strong indicia of a familial relationship but are not necessary)."

There is also a provision in the Code that provides for a 1.5 multiplier to total offense points, when the primary offense is an act of domestic violence, committed in the presence of a child under the age of 16, who is a family member of the victim or the perpetrator.

There are also a number of crimes, such as child abuse, lewd and lascivious behavior upon or in the presence of a child under the age of 16, and sexual battery on a minor, that are most often committed upon family members.

Incest under s. 826.04, F.S., "renders felonious marriage or sexual intercourse with a person to whom a defendant 'is related by lineal consanguinity.'" *Hendry v. State*, 571 So.2d 94 (Fla. 2d DCA 1990).

III. Effect of Proposed Changes:

A. Voluntary Intoxication Defense

Committee Substitute for Senate Bills 54 and 902 prohibits evidence of voluntary intoxication to be considered by the fact-finder in determining the existence of a mental state that is an element of the criminal offense. In other words, the CS prohibits the use of voluntary intoxication as a defense to any criminal offense

Committee Substitute for Senate Bills 54 and 902 allows a defendant, outside the hearing of the jury, to have an opportunity to prove to the court by a preponderance of the evidence that he or she did not know that a substance was an intoxicating substance when he or she consumed, smoked, inhaled, injected, or otherwise ingested the intoxicating substance. If so proven, the court may allow the evidence to be submitted to the jury or considered by the court.

Committee Substitute for Senate Bills 54 and 902 defines the term "intoxicating substance" as a "substance capable of producing intoxication." The term "intoxication" is defined as "a disturbance of physical or mental capacities resulting from the introduction of a substance into the body." By this definition, an intoxicating substance could include harmful substances that have not been classified as controlled substances, e.g. new "designer drugs" that have not been classified as controlled substances by rule or by law. The definition could also include lawfully prescribed medication, unless the defendant proved he or she did not know that the medication taken was an intoxicating substance.

Since the CS does not address involuntary intoxication, it appears that a defendant could still raise involuntary intoxication as a defense, e.g. the defendant claims that a drug was placed in his drink without his knowledge

B. Lineal Consanguinity

Committee Substitute for Senate Bills 54 and 902 also provides that the penalty for any felony shall be reclassified as provided if the victim of the felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian. The reclassification is as follows: a third degree felony is punishable as a second degree felony; a second degree felony is punishable as a first degree felony; a first degree felony is punishable as a life felony.

The CS does not specify that physical injury to the victim must be present, therefore, the CS appears to apply to all non-violent felonies, as well, if the victim is related to the defendant by lineal consanguinity or is the defendant's legal guardian

The CS does not capture for felony reclassification all persons who are sentenced for sexual battery by a person in "familial or custodial authority," since the reach of this offense goes beyond such cases where the victim is related by lineal consanguinity to the perpetrator. The Florida Supreme Court has noted that "[i]n today's society, the parameters of the traditional family have become much less clearly defined. Many children live in situations involving broken homes, where multiple residences and step-parents or live-in partners are the norm." *Saffor v. State*, 660 So.2d 668, 670 (Fla. 1995).

The effect of the escalation of a felony under the Criminal Punishment Code is significant with respect to the maximum penalty. For example, the escalation of a first degree felony by one felony degree can mean the difference between 30 years and the remainder of the defendant's natural life.

Committee Substitute for Senate Bills 54 and 902 does not specifically indicate whether the law, as proposed, is to be read in tandem with other laws, and if so, how it effects sentencing of defendants for incest and for cases in which the victim and the perpetrator are related by lineal consanguinity, and a family relationship requirement is an element of the sentencing offense.

The CS takes effect on July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None

B. Private Sector Impact:

None

C. Government Sector Impact:

The provision of SBs 54 and 902 prohibiting voluntary intoxication as a defense in criminal cases is not expected to cause a significant adverse fiscal impact on either the state correctional system or on the judicial system.

However, according to the Criminal Justice Impact Conference (CJIC), the reclassification of a felony to the next higher degree if the victim is related to the defendant by lineal consanguinity or is the defendant's legal guardian has the potential for a significant, although indeterminate adverse fiscal impact

The CJIC is unable to project the fiscal impact of CS/SB 54 & 902 with any precision because of the amount of discretion embedded in the Criminal Punishment Code, but the bill is likely to result in longer sentences for persons subject to its provisions. As an illustrative example, there were over 8,300 domestic violence felony arrests in 1997 where the crime was committed upon a parent, child, or sibling victim. The Department of Corrections further notes that there were 946 admissions for child abuse (mostly committed by family members or guardians); and 2,040 admissions for lewd, lascivious or indecent assault or act upon or in the presence of a child (mostly committed by family members or guardians).

By narrowing the range of offenses subject to reclassification, Amendment #1 by the Fiscal Policy Committee should mitigate a good deal of the adverse potential fiscal impact over the next five years

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Fiscal Policy:

Excludes from the felony reclassification provisions all non-forcible felonies, familial sexual battery, incest, other felonies in which lineal consanguinity is an element of the offense, and offenses in which the victim's relationship to the defendant would be subject to a greater penalty under another section of the statutes.

Bill No. CS for SB's 54 & 902

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Lee moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 3, lines 1-13, delete section 2

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16 (Redesignate subsequent sections.)

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21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 1, lines 7-11, delete those lines

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25 and insert:

26 providing an effective date.

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Bill No. CS for SB's 54 & 902

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Lee moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Voluntary intoxication; not a defense;
evidence not admissible for certain purposes;
exception.--Voluntary intoxication resulting from the
consumption, injection, or other use of alcohol or other
controlled substance as described in chapter 893, Florida
Statutes, is not a defense to any offense proscribed by law.
Evidence of a defendant's voluntary intoxication is not
admissible to show that the defendant lacked the specific
intent to commit an offense and is not admissible to show that
the defendant was insane at the time of the offense, except
when the consumption, injection, or use of a controlled
substance under chapter 893, Florida Statutes, was pursuant to
a lawful prescription issued to the defendant by a
practitioner as defined in s. 893.02, Florida Statutes.

Section 2. This act shall take effect October 1, 1999.

Bill No. CS for SB's 54 & 902

Amendment No. ____

1 ===== T I T L E A M E N D M E N T =====
2 And the title is amended as follows:
3 Delete everything before the enacting clause
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5 and insert:
6 A bill to be entitled
7 An act relating to evidence; providing that
8 evidence of voluntary intoxication is not
9 admissible for certain purposes; providing an
10 exception; providing an effective date.
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Journal
of the
S E N A T E
State of Florida



THIRTY-FIRST REGULAR SESSION
UNDER THE CONSTITUTION AS REVISED IN 1968
MARCH 2 THROUGH APRIL 30, 1999

installs a salvaged airbag to disclose to the purchaser that the airbag is salvaged, prohibiting certain activities, providing penalties, providing an effective date

—a companion measure, was substituted for **CS for SB 244** and read the second time by title

Pursuant to Rule 4 19, **HB 79** was placed on the calendar of Bills on Third Reading

On motion by Senator Lee—

CS for SB's 54 and 902—A bill to be entitled An act relating to criminal law, creating s 90 4051, F S , prohibiting consideration of evidence of a defendant's voluntary intoxication to determine the existence of a mental state that is an element of a crime, creating s 775 0852, F S , requiring that an enhanced penalty be imposed if the victim of a felony is related by lineal consanguinity to the defendant or is the defendant's legal guardian, providing an effective date

—was read the second time by title

An amendment was considered and failed and an amendment was considered and adopted to conform **CS for SB's 54 and 902** to **CS for HB's 421 and 485**

Pending further consideration of **CS for SB's 54 and 902** as amended, on motion by Senator Lee, by two-thirds vote **CS for HB's 421 and 485** was withdrawn from the Committees on Criminal Justice and Fiscal Policy

On motion by Senator Lee, by two-thirds vote—

CS for HB's 421 and 485—A bill to be entitled An act relating to evidence, providing that evidence of voluntary intoxication is not admissible for certain purposes, providing an exception, providing an effective date

—a companion measure, was substituted for **CS for SB's 54 and 902** as amended and by two-thirds vote read the second time by title

Pursuant to Rule 4 19, **CS for HB's 421 and 485** was placed on the calendar of Bills on Third Reading

SENATOR BURT PRESIDING

On motion by Senator Campbell, by two-thirds vote **CS for HB 49** was withdrawn from the Committee on Criminal Justice

On motion by Senator Campbell, by two-thirds vote—

CS for HB 49—A bill to be entitled An act relating to criminal use of personal identification information, creating s 817 568, F S , providing definitions, providing that a person who willfully and without authorization uses, or possesses with intent to use, personal identification information concerning an individual without previously obtaining the individual's consent commits either the offense of fraudulent use of personal identification information or the offense of harassment by use of personal identification information, depending on specified circumstances, providing penalties, providing for nonapplicability of the new provisions to specified law enforcement activities, providing for restitution, including attorney's fees and costs, to the victim, providing for prosecution by the state attorney or the statewide prosecutor, reenacting s 464 018(1)(d), F S , relating to disciplinary actions for violations of the Nurse Practice Act, s 772 102(1)(a), F S , relating to definition of "criminal activity" with respect to the Civil Remedies for Criminal Practices Act, and s 895 02(1)(a), F S , relating to definition of "racketeering activity," to provide for incorporation of said new section in references to ch 817, F S . providing an effective date

—a companion measure, was substituted for **CS for SB's 286, 722 and 1074** and by two-thirds vote read the second time by title

Pursuant to Rule 4 19, **CS for HB 49** was placed on the calendar of Bills on Third Reading

Consideration of **SB 730** was deferred

On motion by Senator Campbell, by two-thirds vote **CS for HB 11** was withdrawn from the Committees on Criminal Justice and Fiscal Policy

On motion by Senator Campbell—

CS for HB 11—A bill to be entitled An act relating to arrests, amending s 901 02, F S , relating to issuance of arrest warrants, providing that a warrant is issued at the time it is signed by the magistrate, providing that the court may issue a warrant for the defendant's arrest under specified circumstances when a complaint has been filed charging the commission of a misdemeanor only and the summons issued to the defendant is returned unserved, creating s 901 36, F S , prohibiting a person who has been arrested or lawfully detained by a law enforcement officer from giving a false name or otherwise falsely identifying himself or herself to the law enforcement officer or county jail personnel, providing penalties, providing for an increased penalty if a person is adversely affected by the unlawful use of the person's name or other identification, permitting the adversely affected person to obtain court orders to correct public records under specified circumstances, authorizing issuance of such court orders by the sentencing court, providing for restitution orders, providing an effective date

—a companion measure, was substituted for **CS for SB 738** and read the second time by title

Pursuant to Rule 4 19, **CS for HB 11** was placed on the calendar of Bills on Third Reading

On motion by Senator Latvala, by two-thirds vote **CS for HB 183** was withdrawn from the Committees on Criminal Justice and Fiscal Policy

On motion by Senator Latvala—

CS for HB 183—A bill to be entitled An act relating to sentencing, amending s 775 085, F S , reclassifying penalties relating to offenses evidencing prejudice, amending s 794 023, F S , reclassifying offenses involving multiple perpetrators of sexual battery, providing an effective date

—a companion measure, was substituted for **CS for SB 912** and read the second time by title

Pursuant to Rule 4 19, **CS for HB 183** was placed on the calendar of Bills on Third Reading

On motion by Senator Silver—

SB 1178—A bill to be entitled An act relating to the juvenile justice continuum, creating s 985 3065, F S , authorizing a law enforcement agency or school district to establish a prearrest diversion program in cooperation with the state attorney, providing that a child may be required to surrender his or her driver's license under the program, authorizing the state attorney to notify the Department of Highway Safety and Motor Vehicles to suspend the driver's license of a child who fails to comply with the requirements of the prearrest diversion program, providing an effective date

—was read the second time by title

Pursuant to Rule 4 19, **SB 1178** was placed on the calendar of Bills on Third Reading

Consideration of **CS for SB 748** was deferred

On motion by Senator Meek—

CS for SB 370—A bill to be entitled An act relating to domestic violence, amending s 741 31, F S , providing that it is unlawful for a person subject to an injunction for protection against domestic violence to refuse to surrender any firearm or ammunition in his or her custody,

By Senator Silver

38-368-99

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A bill to be entitled

An act relating to criminal prosecutions;
providing that voluntary intoxication is not a
defense to prosecution for an offense;
providing exceptions; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Voluntary intoxication resulting from the
consumption, ingestion, or other use of alcohol or of
controlled substances as defined in section 893.02, Florida
Statutes, is not a defense to a prosecution for any criminal
offense. Evidence of a defendant's voluntary intoxication is
not admissible to show that the defendant lacked the specific
intent to commit an offense and is not admissible to show that
the defendant was insane at the time of the offense, except
when the consumption, injection, or other use of a controlled
substance was pursuant to a lawful prescription issued by a
practitioner as defined in section 893.02, Florida Statutes.

Section 2. This act shall take effect July 1, 1999.

SENATE SUMMARY

Removes voluntary intoxication through consumption,
ingestion, or other use of alcohol or controlled
substances as a defense in a prosecution for a criminal
offense, and provides that evidence of voluntary
intoxication is inadmissible to show insanity or lack of
intent unless the controlled substance was consumed,
ingested, or used pursuant to a prescription by a medical
practitioner.

By Senator Sebesta

20-874A-99

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A bill to be entitled
An act relating to the criminal defense of
insanity; creating s. 775.027, F.S.; providing
requirements for establishment of insanity
defense; defining "mental infirmity, disease,
or defect"; specifying conditions that do not
constitute legal insanity; providing that the
defendant has the burden of proving the
insanity defense by clear and convincing
evidence; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.027, Florida Statutes, is
created to read:

775.027 Insanity defense.--

(1) AFFIRMATIVE DEFENSE.--All persons are presumed to
be sane. It is an affirmative defense to a criminal
prosecution that, at the time of the commission of the acts
constituting the offense, the defendant was insane. Insanity
is established when.

(a) The defendant had a mental infirmity, disease, or
defect; and

(b) Because of this condition, the defendant:

1. Did not know what he or she was doing or its
consequences; or

2. Although the defendant knew what he or she was
doing and its consequences, the defendant did not know that
what he or she was doing was wrong.

1 The term "mental infirmity, disease, or defect" as used in
2 this subsection does not include disorders that result from
3 acute voluntary intoxication or withdrawal from alcohol or
4 drugs, character defects, psychosexual disorders, or
5 irresistible impulse. Conditions that do not constitute legal
6 insanity include, but are not limited to, momentary, temporary
7 conditions arising from the pressure of the circumstances;
8 moral decadence; an abnormality that is manifested only by
9 criminal conduct; diminished capacity; or depravity or passion
10 growing out of anger, jealousy, revenge, hatred, or other
11 motives in a person who does not suffer from a mental
12 infirmity, disease, or defect. Mental infirmity, disease, or
13 defect does not constitute a defense of insanity except as
14 provided in this subsection.

15 (2) BURDEN OF PROOF.--The defendant has the burden of
16 proving the defense of insanity by clear and convincing
17 evidence.

18 Section 2. This act shall take effect upon becoming a
19 law.

20 *****

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22 SENATE SUMMARY

23 Prescribes requirements for the defense of insanity.
24 Imposes on the defendant the burden of proving the
25 defense by clear and convincing evidence.
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By the Committee on Criminal Justice and Senator Sebesta

307-1942-99

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A bill to be entitled
An act relating to the criminal defense of
insanity; creating s. 775.027, F.S.; providing
requirements for establishment of insanity
defense; specifying conditions that do not
constitute legal insanity; providing that the
defendant has the burden of proving the
insanity defense by clear and convincing
evidence; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.027, Florida Statutes, is
created to read:

775.027 Insanity defense.--

(1) AFFIRMATIVE DEFENSE.--All persons are presumed to
be sane. It is an affirmative defense to a criminal
prosecution that, at the time of the commission of the acts
constituting the offense, the defendant was insane. Insanity
is established when:

(a) The defendant had a mental infirmity, disease, or
defect; and

(b) Because of this condition, the defendant:

1. Did not know what he or she was doing or its
consequences; or

2. Although the defendant knew what he or she was
doing and its consequences, the defendant did not know that
what he or she was doing was wrong.

The term "mental infirmity, disease, or defect" as used in
this subsection does not include disorders that result from

1 acute voluntary intoxication or withdrawal from alcohol or
2 drugs, character defects, psychosexual disorders, or
3 irresistible impulse. Conditions that do not constitute legal
4 insanity include, but are not limited to, moral decadence; an
5 abnormality that is manifested only by criminal conduct; or
6 diminished capacity.

7 (2) BURDEN OF PROOF --The defendant has the burden of
8 proving the defense of insanity by clear and convincing
9 evidence.

10 Section 2. This act shall take effect upon becoming a
11 law.

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13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bill 2188

- 16 - Deletes the phrase, "momentary, temporary conditions
17 arising from the pressure of the circumstances," from
18 the list of conditions that do not include legal
19 insanity.
20 - Deletes the phrase, "depravity or passion growing out of
21 anger, jealousy, revenge, hatred, or other motives in a
22 person who does not suffer from a mental infirmity,
23 disease or defect" from the list of conditions that do
24 not include legal insanity.
25 - Deletes the phrase, "mental infirmity, disease, or
26 defect does not constitute a defense of insanity except
27 as provided in this subsection," to correct a technical
28 deficiency.
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below)

BILL CS/SB 2188
 SPONSOR Criminal Justice Committee and Senator Sebesta
 SUBJECT Insanity defense in criminal cases
 DATE March 31, 1999 REVISED _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gomez	Cannon	CJ	Favorable/CS
2.	_____	_____	FP	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill codifies the affirmative defense of insanity by creating s. 775.027, F.S. The bill adopts the M'Naghten Rule by stating that insanity is established when, at the time of the offense:

- ▶ The defendant had a mental infirmity, disease or defect, **and**
- ▶ Because of this condition, the defendant:
 - a. did not know what he or she was doing or its consequences, **or**
 - b. although he knew what he or she was doing and its consequences, he did not know it was wrong.

Currently, when the defendant introduces evidence sufficient to present a reasonable doubt of sanity, the presumption of sanity vanishes and the burden then shifts to the state to prove the defendant's sanity beyond a reasonable doubt. The bill provides that the defendant has the burden of proving the defense of insanity by clear and convincing evidence. This mirrors the federal standard contained in the U.S. Code.

The bill takes effect upon becoming a law.

This bill creates the following section of the Florida Statutes: 775.027

II. Present Situation:

M'Naghten Rule. In Florida, insanity is an affirmative defense to any criminal prosecution. Although there is currently no statute which addresses the insanity defense, the defense has been recognized through case law. "The legal test of insanity in Florida, for criminal purposes, has long

been the so-called "M'Naghten Rule" *Hall v. State*, 568 So. 2d 882 (Fla. 1990). Under the M'Naghten Rule an accused is not criminally responsible if, *at the time of the alleged crime*:

- ▶ He or she had a mental infirmity, disease or defect, **and**
- ▶ Because of this condition
 - a. he did not know what he was doing or its consequences, **or**
 - b. although he knew what he was doing and its consequences, he did not know it was wrong.

See Fla.Std.Jury Instr. (Crim.) 3.04(b). In order to introduce evidence of insanity the defense must produce evidence of *both* of the above two prongs. See *Hall* (Expert testimony that a defendant suffered from a mental infirmity, disease, or defect without concluding that, as a result, the defendant could not distinguish right from wrong is irrelevant).

Burdens. In Florida a person is presumed sane, and, in a criminal prosecution, the burden is on the defendant to present evidence of insanity. *Yohn v. State*, 476 So. 2d 123, 126 (Fla.1985). However, where the defendant introduces evidence sufficient to present a reasonable doubt of sanity, the presumption of sanity vanishes and the burden then shifts to the state to prove the defendant's sanity beyond a reasonable doubt. See *Id*; *Viovenel v. State* 581 So. 2d 930, 931, (Fla. 3d DCA 1991)

Mental Infirmity, disease or defect. Generally, mental infirmity, disease or defect is proved by expert testimony from psychiatrists who treated or examined the defendant. The case law has not clearly addressed what specific conditions constitute mental infirmities, diseases or defects. In a case involving the combined effect of a defendant's voluntary intoxication and a mental disease or defect, the Court held that the trial court could allow testimony of the defendant's mental condition, but cautioned that the trial court "must determine that the mental disease or mental defect is a diagnosis recognized by authorities generally accepted in medicine, psychiatry, or psychology." *State v. Bias*, 653 So. 2d 380, 382 (Fla. 1995).

Further, if there is no evidence that a mental condition constitutes a mental infirmity, disease or defect, then evidence of the condition is not admissible. *Chestnut v. State*, 538 So. 2d 820 (Fla. 1989)(rejecting the defense of "diminished capacity").

Temporary Insanity. The Florida courts have not required that the defendant's insanity have persisted for a certain length of time, only that the defendant was insane at the time of the offense. As the standard jury instructions state: "[t]he question you must answer is not whether the defendant is insane today, or has ever been insane, but simply if the defendant was insane at the time the crime was allegedly committed." See Fla.Std.Jury Instr. (Crim.) 3.04(b). Consequently, jurors may currently consider evidence of temporary insanity, so long as the evidence is found to be otherwise relevant

Rules of Criminal Procedure The Florida Rules of Criminal Procedure contain several rules that relate to the insanity defense. Rule 3.216, requires the defense to file a notice of its intent to raise

an insanity defense at trial. This rule also authorizes the court to appoint disinterested experts to examine the defendant. Rule 3.217, provides that when a person is found not guilty by reason of insanity, "the verdict or finding of not guilty judgment shall state that it was given for that reason." Rule 3.218 and s. 916.15, F.S., provide for the commitment and 6 month status review of persons found not guilty by reason of insanity (NGI) and for meeting certain criteria for treatment. According to the Department of Children and Families, a statewide annual average of 75 to 100 persons are committed to treatment at the state hospital under NGI status. As of March, 1999, a statewide total of 387 persons were being treated under NGI status in all facilities

Federal statute. "The acquittal of John Hinkley on all charges stemming from his attempt on President Reagan's life, coupled with the ensuing public focus on the insanity defense, prompted Congress to undertake a comprehensive overhaul of the insanity defense as it operated in the federal courts." *Shannon v United States*, 512 U. S. 573, 114 S. Ct. 2419 (1994). The result was the Insanity Defense Reform Act of 1984, (IDRA), 18 U.S.C ss 17, 4241-4247. The IDRA makes insanity an affirmative defense to be proved by the defendant by clear and convincing evidence

Affirmative defenses. "An 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question." *State v. Cohen*, 568 So. 2d 49, 51 (Fla.1990). Justifiable use of force (self-defense), insanity, entrapment, voluntary intoxication, are all affirmative defenses. *Smith v. State*, 698 So.2d 632 (Fla. 2d DCA 1997). The justifiable use of force and entrapment affirmative defenses are codified in statute. ss. 777.201, 782.02, 782.03, F.S. & ch. 776, F.S. The entrapment statute, s. 777.201, F.S., provides that a defendant must prove "by a preponderance of the evidence that his or her criminal conduct occurred as a result of an entrapment." In *Herrera v. State*, 594 So. 2d 275 (Fla. 1992), the Court held the entrapment statute's requirement that the defendant prove entrapment by a preponderance of evidence did not violate the due process clauses of Federal or State Constitutions.

III. Effect of Proposed Changes:

This bill codifies the affirmative defense of insanity by creating s. 775 027, F.S. The bill states that all persons are presumed to be sane. The bill states that it is an affirmative defense to a criminal prosecution that, at the time of the commission of the acts constituting the offense, the defendant was insane. The bill adopts the M'Naghten Rule by stating that insanity is established when:

- ▶ The defendant had a mental infirmity, disease or defect, **and**
- ▶ Because of this condition, the defendant:
 - a. did not know what he or she was doing or its consequences, **or**
 - b. although he knew what he or she was doing and its consequences, he did not know it was wrong.

The bill excludes various conditions from the term "mental infirmity, disease, or defect," as follows:

- ▶ disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, or
- ▶ character defects, psychosexual disorders or irresistible impulse.

The bill then specifies that the following conditions do not constitute legal insanity:

- ▶ moral decadence,
- ▶ an abnormality that is manifested only by criminal conduct, or
- ▶ diminished capacity.

Currently, when the defendant introduces evidence sufficient to present a reasonable doubt of sanity, the presumption of sanity vanishes and the burden then shifts to the state to prove the defendant's sanity beyond a reasonable doubt. The bill provides that the defendant has the burden of proving the defense of insanity by clear and convincing evidence. This mirrors the federal standard contained in the U.S. Code.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This mirrors the federal standard contained in the U S Code. In *John v State*, 476 So.2d 123 (Fla. 1985), the Florida Supreme Court recognized that in *Patterson v. New York*, 432 U.S. 197, 97 S Ct. 2319 (1977), the United States Supreme Court held that it was not unconstitutional to place the burden on a defendant to prove he was insane at the time of the commission of the offense. However, following its own precedent, the Florida Supreme Court decided not to place the burden of proof of insanity on the defendant but rather created "a rebuttable presumption of sanity which if overcome, must be proven by the state just like any other element of the offense." The Florida Supreme Court based its decision on policy reasons and not on constitutional grounds.

In *Leland v Oregon*, 343 U.S. 790, 72 S Ct. 1002 (1952), the United States Supreme Court decided that an Oregon statute which requires a defendant to establish the defense of insanity beyond a reasonable doubt did not violate due process. The burden that this bill places on a

defendant to prove insanity - proof by clear and convincing evidence - is a lesser burden than the beyond a reasonable doubt approved of in *Leland*. Further, in *Herrera v State*, 594 So. 2d 275 (Fla. 1992), the Florida Supreme Court held the entrapment statute's requirement that the defendant prove the affirmative defense of entrapment by a preponderance of evidence did not violate the due process clauses of Federal or State Constitutions.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill provides that disorders resulting from acute voluntary intoxication or withdrawal from alcohol or drugs shall not constitute the defense of insanity. On March 3, 1999, the Criminal Justice Committee reported favorably as a committee substitute Senate Bills 54 and 902. Committee Substitute for Senate Bills 54 and 902 prohibits evidence of voluntary intoxication to be considered by the fact-finder in determining the existence of a mental state that is an element of the criminal offense. In other words, the bill prohibits the use of voluntary intoxication as a defense to any criminal offense.

The bill provides the defendant, outside the hearing of the jury, an opportunity to prove to the court by a preponderance of the evidence that he or she did not know that a substance was an intoxicating substance when he or she consumed, smoked, inhaled, injected, or otherwise ingested the intoxicating substance. If so proven, the court may allow the evidence to be submitted to the jury or considered by the court.

VIII. Amendments:

None.

By Representative J. Miller

1 A bill to be entitled
2 An act relating to the criminal defense of
3 insanity; creating s. 775.027, F.S.; providing
4 requirements for establishment of insanity
5 defense; defining "mental infirmity, disease,
6 or defect"; specifying conditions that do not
7 constitute legal insanity; providing that the
8 defendant has the burden of proving the
9 insanity defense by clear and convincing
10 evidence; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 775.027, Florida Statutes, is
15 created to read:

16 775.027 Insanity defense.--

17 (1) AFFIRMATIVE DEFENSE.--All persons are presumed to
18 be sane. It is an affirmative defense to a criminal
19 prosecution that, at the time of the commission of the acts
20 constituting the offense, the defendant was insane. Insanity
21 is established when:

22 (a) The defendant had a mental infirmity, disease, or
23 defect; and

24 (b) Because of this condition, the defendant:

25 1. Did not know what he or she was doing or its
26 consequences; or

27 2. Although the defendant knew what he or she was
28 doing and its consequences, the defendant did not know that
29 what he or she was doing was wrong.

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31

1 The term "mental infirmity, disease, or defect" as used in
2 this subsection does not include disorders that result from
3 acute voluntary intoxication or withdrawal from alcohol or
4 drugs, character defects, psychosexual disorders, or
5 irresistible impulse. Conditions that do not constitute legal
6 insanity include, but are not limited to, momentary, temporary
7 conditions arising from the pressure of the circumstances;
8 moral decadence; an abnormality that is manifested only by
9 criminal conduct; diminished capacity; or depravity or passion
10 growing out of anger, jealousy, revenge, hatred, or other
11 motives in a person who does not suffer from a mental
12 infirmity, disease, or defect. Mental infirmity, disease, or
13 defect does not constitute a defense of insanity except as
14 provided in this subsection.

15 (2) BURDEN OF PROOF.--The defendant has the burden of
16 proving the defense of insanity by clear and convincing
17 evidence.

18 Section 2. This act shall take effect upon becoming a
19 law.

20 *****

21
22 HOUSE SUMMARY

23 Provides requirements for establishment of insanity
24 defense. Defines "mental infirmity, disease, or defect."
25 Specifies conditions that do not constitute legal
26 insanity. Provides that the defendant has the burden of
27 proving the insanity defense by clear and convincing
28 evidence.
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STORAGE NAME H0381 cp
DATE March 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL # HB 381
RELATING TO The Criminal Defense of Insanity
SPONSOR(S) Representative J Miller
COMPANION BILL(S) S0054

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

- (1) CRIME AND PUNISHMENT
- (2) JUDICIARY
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I SUMMARY:

The bill makes it more difficult for a defendant to use the insanity defense by providing that the defendant has the burden of proving the defense of insanity by clear and convincing evidence.

The bill provides that it is an affirmative defense to a criminal prosecution that at the time of the commission of the offense, the defendant was insane. The bill codifies current law by providing that insanity is established when the defendant had a mental infirmity, disease or defect and because of the condition either did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong.

The bill provides that a "mental infirmity, disease or defect" does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders, or irresistible impulse. The bill also provides a list of conditions that do not constitute legal insanity.

II SUBSTANTIVE ANALYSIS.

A PRESENT SITUATION:

Insanity

In Florida, insanity is a defense to a criminal offense. According to the Florida Supreme Court

The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule." Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong.

Hall v. State, 568 So.2d 882, 888 (Fla. 1990)

The relevant portions of the standard jury instruction relating to insanity states

A person is considered insane when

- 1 He has a mental infirmity, disease or defect
- 2 Because of this condition
 - a he did not know what he was doing or its consequences or
 - b although he knew what he was doing and its consequences, he did not know it was wrong

All persons are presumed to be sane. However, if the evidence causes you to have a reasonable doubt concerning the defendant's sanity, then the presumption of sanity vanishes and the state must prove beyond a reasonable doubt that the defendant was sane.

Unrestrained passion or ungovernable temper is not insanity, even though the normal judgment of the person be overcome by passion or temper.

Florida Standard Jury Instruction 3.04(b).

Element of Mental Infirmity, Disease or Defect

The terms "mental infirmity, disease or defect" are not well defined by Florida courts, however, the Florida Supreme Court has indicated that trial courts should only admit expert testimony about a mental disease or defect if it is a "diagnosis recognized by authorities generally accepted in medicine, psychiatry, or psychology." State v. Bias, 653 So.2d 380 (Fla. 1995)

Diminished Capacity

In Chestnut v. State, 538 So.2d (Fla. 1989), the Florida Supreme Court ruled that evidence of an abnormal mental condition, also known as "diminished capacity" which does not constitute legal insanity is inadmissible to disprove that a defendant had the specific intent to commit the charged crime. For example, in Kight v. State, 512 So.2d 922, (Fla. 1987), the Florida Supreme Court held that testimony of a clinical psychologist that the defendant was borderline mentally retarded with an I.Q. of 69 and was a very dependent and passive person was inadmissible in a capital murder prosecution in the absence of the insanity defense.

B EFFECT OF PROPOSED CHANGES

This bill will codify the "M'Naghten Rule" which is currently used by Florida courts by providing that insanity is established when at the time of the offense, defendant had a mental infirmity, disease or defect and because of this condition, did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong

The bill further provides that the element of insanity requiring proof of a mental infirmity, disease or defect is not satisfied by disorders that result from "acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or irresistible impulse." [In Wheeler v. State, 344 So 2d 244, (Fla 1977) the Florida Supreme Court rejected the "irresistible impulse" test for insanity defense.] The bill further provides that mental infirmity, disease or defect does not constitute a defense of insanity except as provided in this subsection. These provisions are substantially similar to the Arizona statute on insanity

The bill also provides the following non-exclusive list of conditions that do not constitute legal insanity

1. momentary, temporary conditions arising from the pressure of the circumstances
2. moral decadence
3. an abnormality that is manifested only by criminal conduct
4. diminished capacity
5. depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental infirmity, disease or defect

These provisions clarify that certain conditions do not constitute insanity. These conditions would probably not constitute insanity under the "M'Naghten" test. For instance, as discussed earlier, "diminished capacity" cannot be used as a defense in Florida.

The bill also places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute 18 U.S.C. 17.

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?

No

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

No.

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

No

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?

No

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

No

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

No

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

No

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

No

3 Personal Responsibility:

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

No

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?

No.

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?

No

- 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 775 027

E SECTION-BY-SECTION ANALYSIS:

Section 1: Provides for the affirmative defense of insanity

Section 2: Provides that the act will take effect upon becoming a law

III. FISCAL ANALYSIS & 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.

The Criminal Justice Estimating Conference has not met to determine the fiscal impact of this bill.

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

A. APPLICABILITY OF THE MANDATES PROVISION.

Because the bill is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution

B REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES.

The bill does not reduce the state tax shared with counties and municipalities

V. COMMENTS:

The bill places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute and make it more difficult for a defendant to assert an insanity defense. In Yohn v State, 476 So 2d 123 (Fla 1985), the Florida Supreme Court recognized that in Patterson v New York, 432 U S 197, 97 S.Ct. 2319 (1977), the United States Supreme Court held that it was not unconstitutional to place the burden on a defendant to prove he was insane at the time of the commission of the offense. However, following its own precedent, the Florida Supreme Court decided not to place the burden of proof on insanity on the defendant but rather created "a rebuttable presumption of sanity which if overcome, must be proven by the state just like any other element of the offense." The Florida Supreme Court based its decision on policy reasons and not on constitutional grounds. In Leland v. Oregon, 343 U.S. 790, 72 S Ct 1002 (1952), the United States Supreme Court decided that an Oregon statute which requires a defendant to establish the defense of insanity beyond a reasonable doubt did not violate due process. The burden that HB 381 places on a defendant to prove insanity - proof by clear and convincing evidence - is less than the beyond a reasonable doubt burden in Leland and therefore should not present a constitutional problem.

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII SIGNATURES

COMMITTEE ON CRIME AND PUNISHMENT
Prepared by:

Staff Director:

Trina Kramer

J Willis Renuart

STORAGE NAME H0381a cp
DATE March 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL # HB 381
RELATING TO The Criminal Defense of Insanity
SPONSOR(S) Representative J. Miller
COMPANION BILL(S) S0054

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

- (1) CRIME AND PUNISHMENT
 - (2) JUDICIARY
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY

The bill makes it more difficult for a defendant to use the insanity defense by providing that the defendant has the burden of proving the defense of insanity by clear and convincing evidence.

The bill provides that it is an affirmative defense to a criminal prosecution that at the time of the commission of the offense, the defendant was insane. The bill codifies current case law by providing that insanity is established when the defendant had a mental infirmity, disease or defect and because of the condition either did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong.

The bill provides that a "mental infirmity, disease or defect" does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders, or irresistible impulse. The bill also provides a list of conditions that do not constitute legal insanity.

II SUBSTANTIVE ANALYSIS

A PRESENT SITUATION.

Insanity

In Florida, insanity is a defense to a criminal offense. According to the Florida Supreme Court

The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule." Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong

Hall v State, 568 So 2d 882, 888 (Fla 1990)

The relevant portions of the standard jury instruction relating to insanity states

A person is considered insane when:

1. He has a mental infirmity, disease or defect
2. Because of this condition
 - a he did not know what he was doing or its consequences or
 - b. although he knew what he was doing and its consequences, he did not know it was wrong

All persons are presumed to be sane. However, if the evidence causes you to have a reasonable doubt concerning the defendant's sanity, then the presumption of sanity vanishes and the state must prove beyond a reasonable doubt that the defendant was sane.

Unrestrained passion or ungovernable temper is not insanity, even though the normal judgment of the person be overcome by passion or temper

Florida Standard Jury Instruction 3 04(b).

Element of Mental Infirmity, Disease or Defect

The terms "mental infirmity, disease or defect" are not well defined by Florida courts, however, the Florida Supreme Court has indicated that trial courts should only admit expert testimony about a mental disease or defect if its is a "diagnosis recognized by authorities generally accepted in medicine, psychiatry, or psychology" State v Bias, 653 So.2d 380 (Fla 1995).

Diminished Capacity

In Chestnut v. State, 538 So.2d (Fla 1989), the Florida Supreme Court ruled that evidence of an abnormal mental condition, also known as "diminished capacity" which does not constitute legal insanity is inadmissible to disprove that a defendant had the specific intent to commit the charged crime For example, in Kight v State, 512 So 2d 922,(Fla 1987), the Florida Supreme Court held that testimony of clinical psychologist that the defendant was borderline mentally retarded with an I Q of 69 and was very dependent and passive person was inadmissible in a capital murder prosecution in the absence of the insanity defense

Temporary Insanity

Florida courts have not distinguished between temporary and permanent insanity. Insanity does not have to be of a permanent nature to be a defense to a crime Rather, in order for a defendant to be legally insane, at the time of the offense, the defendant had to have had a mental infirmity,

disease or defect which rendered him unable to understand the consequences of his actions or that the actions were wrong. The infirmity, disease or defect can be of a temporary nature but had to have made the defendant unaware of what he was doing or unaware that what he was doing was wrong. Thus, a defendant who has a mental infirmity, disease or defect but who still understands the consequences of his actions would not be legally insane.

B. EFFECT OF PROPOSED CHANGES:

This bill will codify the "M'Naghten Rule" which is currently used by Florida courts by providing that insanity is established when at the time of the offense, defendant had a mental infirmity, disease or defect and because of this condition, did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong.

The bill further provides that the element of insanity requiring proof of a mental infirmity, disease or defect is not satisfied by disorders that result from "acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or irresistible impulse." [In Wheeler v. State, 344 So.2d 244, (Fla. 1977) the Florida Supreme Court rejected the "irresistible impulse" test for insanity defense.] The bill further provides that mental infirmity, disease or defect does not constitute a defense of insanity except as provided in this subsection. These provisions are substantially similar to the Arizona statute on insanity.

The bill also provides the following non-exclusive list of conditions that do not constitute legal insanity.

1. momentary, temporary conditions arising from the pressure of the circumstances
2. moral decadence
3. an abnormality that is manifested only by criminal conduct
4. diminished capacity
5. depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental infirmity, disease or defect

These provisions clarify that certain conditions do not constitute insanity. These conditions would probably not constitute insanity under the "M'Naghten" test. For instance, as discussed earlier, "diminished capacity" cannot be used as a defense in Florida.

The bill also places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute 18 U.S.C. 17.

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?

No

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

No

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

No

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?

No

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

No

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

No

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

No

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

No

3 Personal Responsibility

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

No

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?

No

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?

No

- 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 775 027.

E SECTION-BY-SECTION ANALYSIS

Section 1: Provides for the affirmative defense of insanity

Section 2 Provides that the act will take effect upon becoming a law

III FISCAL ANALYSIS & 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

The Criminal Justice Estimating Conference has not met to determine the fiscal impact of this bill

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

A. APPLICABILITY OF THE MANDATES PROVISION

Because the bill is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution

B REDUCTION OF REVENUE RAISING AUTHORITY

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

The bill does not reduce the state tax shared with counties and municipalities

V. COMMENTS

The bill places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute and make it more difficult for a defendant to assert an insanity defense. In Yohn v. State, 476 So 2d 123 (Fla. 1985), the Florida Supreme Court recognized that in Patterson v. New York, 432 U S 197, 97 S Ct. 2319 (1977), the United States Supreme Court held that it was not unconstitutional to place the burden on a defendant to prove he was insane at the time of the commission of the offense. However, following its own precedent, the Florida Supreme Court decided not to place the burden of proof on insanity on the defendant but rather created "a rebuttable presumption of sanity which if overcome, must be proven by the state just like any other element of the offense." The Florida Supreme Court based its decision on policy reasons and not on constitutional grounds. In Leland v. Oregon, 343 U.S. 790, 72 S Ct. 1002 (1952), the United States Supreme Court decided that an Oregon statute which requires a defendant to establish the defense of insanity beyond a reasonable doubt did not violate due process. The burden that HB 381 places on a defendant to prove insanity - proof by clear and convincing evidence - is less than the beyond a reasonable doubt burden in Leland and therefore should not present a constitutional problem.

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES.

None

VII SIGNATURES.

COMMITTEE ON CRIME AND PUNISHMENT.
Prepared by:

Staff Director

Trina Kramer

J Willis Renuart

By the Committee on Crime & Punishment and Representative
J. Miller

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A bill to be entitled
An act relating to the criminal defense of
insanity; creating s. 775.027, F.S.; providing
requirements for establishment of insanity
defense; defining "mental infirmity, disease,
or defect"; specifying conditions that do not
constitute legal insanity; providing that the
defendant has the burden of proving the
insanity defense by clear and convincing
evidence; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.027, Florida Statutes, is
created to read:

775 027 Insanity defense.--

(1) AFFIRMATIVE DEFENSE.--All persons are presumed to
be sane. It is an affirmative defense to a criminal
prosecution that, at the time of the commission of the acts
constituting the offense, the defendant was insane. Insanity
is established when:

(a) The defendant had a mental infirmity, disease, or
defect; and

(b) Because of this condition, the defendant:

1. Did not know what he or she was doing or its
consequences; or

2. Although the defendant knew what he or she was
doing and its consequences, the defendant did not know that
what he or she was doing was wrong.

1 The term "mental infirmity, disease, or defect" as used in
2 this subsection does not include disorders that result from
3 acute voluntary intoxication or withdrawal from alcohol or
4 drugs, character defects, psychosexual disorders, or
5 irresistible impulse. Conditions that do not constitute legal
6 insanity include, but are not limited to, moral decadence, an
7 abnormality that is manifested only by criminal conduct, or
8 diminished capacity. Mental infirmity, disease, or defect does
9 not constitute a defense of insanity except as provided in
10 this subsection.

11 (2) BURDEN OF PROOF.--The defendant has the burden of
12 proving the defense of insanity by clear and convincing
13 evidence.

14 Section 2. This act shall take effect upon becoming a
15 law.

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STORAGE NAME: H0381s1 cp
DATE March 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: CS/HB 381
RELATING TO The Criminal Defense of Insanity
SPONSOR(S) Committee on Crime & Punishment and Representative J Miller
COMPANION BILL(S) SB 2188(l)

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (2) JUDICIARY
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I SUMMARY

The committee substitute makes it more difficult for a defendant to use the insanity defense by providing that the defendant has the burden of proving the defense of insanity by clear and convincing evidence.

The committee substitute provides that it is an affirmative defense to a criminal prosecution that at the time of the commission of the offense, the defendant was insane. The committee substitute codifies current case law by providing that insanity is established when the defendant had a mental infirmity, disease or defect and because of the condition either did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong

The committee substitute provides that a "mental infirmity, disease or defect" does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders, or irresistible impulse. The committee substitute also provides a list of conditions that do not constitute legal insanity.

II SUBSTANTIVE ANALYSIS

A PRESENT SITUATION

Insanity

In Florida, insanity is a defense to a criminal offense. According to the Florida Supreme Court

The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule." Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong

Hall v. State, 568 So 2d 882, 888 (Fla. 1990).

The relevant portions of the standard jury instruction relating to insanity states

A person is considered insane when.

- 1 He has a mental infirmity, disease or defect
2. Because of this condition
 - a he did not know what he was doing or its consequences or
 - b although he knew what he was doing and its consequences, he did not know it was wrong

All persons are presumed to be sane. However, if the evidence causes you to have a reasonable doubt concerning the defendant's sanity, then the presumption of sanity vanishes and the state must prove beyond a reasonable doubt that the defendant was sane

Unrestrained passion or ungovernable temper is not insanity, even though the normal judgment of the person be overcome by passion or temper

Florida Standard Jury Instruction 3 04(b)

Element of Mental Infirmity, Disease or Defect

The terms "mental infirmity, disease or defect" are not well defined by Florida courts, however, the Florida Supreme Court has indicated that trial courts should only admit expert testimony about a mental disease or defect if it is a "diagnosis recognized by authorities generally accepted in medicine, psychiatry, or psychology." State v. Bias, 653 So.2d 380 (Fla. 1995).

Diminished Capacity

In Chestnut v. State, 538 So 2d (Fla. 1989), the Florida Supreme Court ruled that evidence of an abnormal mental condition, also known as "diminished capacity" which does not constitute legal insanity is inadmissible to disprove that a defendant had the specific intent to commit the charged crime. For example, in Kight v. State, 512 So 2d 922, (Fla. 1987), the Florida Supreme Court held that testimony of clinical psychologist that the defendant was borderline mentally retarded with an I Q of 69 and was very dependent and passive person was inadmissible in a capital murder prosecution in the absence of the insanity defense

Temporary Insanity

Florida courts have not distinguished between temporary and permanent insanity. Insanity does not have to be of a permanent nature to be a defense to a crime. Rather, in order for a defendant

to be legally insane, at the time of the offense, the defendant had to have had a mental infirmity, disease or defect which rendered him unable to understand the consequences of his actions or that the actions were wrong. The infirmity, disease or defect can be of a temporary nature but had to have made the defendant unaware of what he was doing or unaware that what he was doing was wrong. Thus, a defendant who has a mental infirmity, disease or defect but who still understands the consequences of his actions would not be legally insane

B. EFFECT OF PROPOSED CHANGES

This committee substitute will codify the "M'Naghten Rule" which is currently used by Florida courts by providing that insanity is established when at the time of the offense, the defendant had a mental infirmity, disease or defect and because of this condition, did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong

The committee substitute further provides that the element of insanity requiring proof of a mental infirmity, disease or defect is not satisfied by disorders that result from "acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or irresistible impulse." [In Wheeler v State, 344 So 2d 244, (Fla 1977) the Florida Supreme Court rejected the "irresistible impulse" test for insanity defense.] The committee substitute further provides that mental infirmity, disease or defect does not constitute a defense of insanity except as provided in this subsection. These provisions are substantially similar to the Arizona statute on insanity

The committee substitute also provides the following non-exclusive list of conditions that do not constitute legal insanity

1. moral decadence
2. an abnormality that is manifested only by criminal conduct
3. diminished capacity

These provisions clarify that certain conditions do not constitute insanity. These conditions would probably not constitute insanity under the "M'Naghten" test. For instance, as discussed earlier, "diminished capacity" cannot be used as a defense in Florida

The committee substitute also places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute. 18 U.S.C 17

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?

No

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

No

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

No.

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?

No

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

No.

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

No.

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

No

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

No

3 Personal Responsibility

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

No.

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?

No

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?

No.

- 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 775 027

E SECTION-BY-SECTION ANALYSIS

Section 1 Provides for the defense of insanity

Section 2 Provides that the act will take effect upon becoming a law

III FISCAL ANALYSIS & 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

The Criminal Justice Estimating Conference has not met to determine the fiscal impact of this committee substitute but it is expected that any fiscal impact would be insignificant

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the committee substitute is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution

B REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce anyone's revenue raising authority.

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce the state tax shared with counties and municipalities

V. COMMENTS.

The committee substitute places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute and make it more difficult for a defendant to assert an insanity defense. In Yohn v State, 476 So.2d 123 (Fla 1985), the Florida Supreme Court recognized that in Patterson v New York, 432 U S 197, 97 S Ct. 2319 (1977), the United States Supreme Court held that it was not unconstitutional to place the burden on a defendant to prove he was insane at the time of the commission of the offense. However, following its own precedent, the Florida Supreme Court decided not to place the burden of proof on insanity on the defendant but rather created "a rebuttable presumption of sanity which if overcome, must be proven by the state just like any other element of the offense." The Florida Supreme Court based its decision on policy reasons and not on constitutional grounds. In Leland v Oregon, 343 U S 790, 72 S Ct 1002 (1952), the United States Supreme Court decided that an Oregon statute which requires a defendant to establish the defense of insanity beyond a reasonable doubt did not violate due process. The burden that CS/HB 381 places on a defendant to prove insanity - proof by clear and convincing evidence - is less than the beyond a reasonable doubt burden in Leland and therefore should not present a constitutional problem

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Miller offered two amendments at the Committee on Crime and Punishment meeting held March 9, 1999. The first amendment deleted language from the bill which provided that a "momentary, temporary condition arising from the presence of the circumstances did not constitute legal insanity." The second amendment removed language providing that "depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental infirmity, disease or defect" did not constitute insanity. These amendments were offered after committee members expressed concern that the above quoted language would eliminate the defense of temporary insanity in Florida. The bill with the two amendments was made a committee substitute.

STORAGE NAME. H0381s1.cp
DATE: March 9, 1999
PAGE 8

VII SIGNATURES.

COMMITTEE ON CRIME AND PUNISHMENT
Prepared by:

Staff Director:

Trina Kramer

J. Willis Renuart

STORAGE NAME H0381s1 jud
DATE March 22, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL # CS/HB 381
RELATING TO Criminal Defense of Insanity
SPONSOR(S) Committee on Crime & Punishment and Representative J. Miller
COMPANION BILL(S) SB 2188(l)

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (2) JUDICIARY
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I SUMMARY

The committee substitute makes it more difficult for a defendant to use the insanity defense by providing that the defendant has the burden of proving the defense of insanity by clear and convincing evidence

The committee substitute provides that it is an affirmative defense to a criminal prosecution that at the time of the commission of the offense, the defendant was insane. The committee substitute codifies current case law by providing that insanity is established when the defendant had a mental infirmity, disease or defect and because of the condition either did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong

The committee substitute provides that a "mental infirmity, disease or defect" does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders, or irresistible impulse. The committee substitute also provides a list of conditions that do not constitute legal insanity

II SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION

Insanity

In Florida, insanity is a defense to a criminal offense According to the Florida Supreme Court

The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule " Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong.

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- 2 Because of this condition
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 - b although he knew what he was doing and its consequences, he did not know it was wrong

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Florida Standard Jury Instruction 3 04(b)

Element of Mental Infirmity, Disease or Defect

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Diminished Capacity

In Chestnut v State, 538 So 2d (Fla 1989), the Florida Supreme Court ruled that evidence of an abnormal mental condition, also known as "diminished capacity" which does not constitute legal insanity is inadmissible to disprove that a defendant had the specific intent to commit the charged crime For example, in Kight v State, 512 So 2d 922,(Fla. 1987), the Florida Supreme Court held that testimony of clinical psychologist that the defendant was borderline mentally retarded with an I Q of 69 and was very dependent and passive person was inadmissible in a capital murder prosecution in the absence of the insanity defense

Temporary Insanity

Florida courts have not distinguished between temporary and permanent insanity Insanity does not have to be of a permanent nature to be a defense to a crime Rather, in order for a defendant to be legally insane, at the time of the offense, the defendant had to have had a mental infirmity, disease or defect which rendered him unable to understand the consequences of his actions or that the actions were wrong The infirmity, disease or defect can be of a temporary nature but had to have

made the defendant unaware of what he was doing or unaware that what he was doing was wrong
Thus, a defendant who has a mental infirmity, disease or defect but who still understands the consequences of his actions would not be legally insane

B EFFECT OF PROPOSED CHANGES.

This committee substitute will codify the "M'Naghten Rule" which is currently used by Florida courts by providing that insanity is established when at the time of the offense, the defendant had a mental infirmity, disease or defect and because of this condition, did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong

The committee substitute further provides that the element of insanity requiring proof of a mental infirmity, disease or defect is not satisfied by disorders that result from "acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or irresistible impulse" [In Wheeler v State, 344 So.2d 244, (Fla 1977) the Florida Supreme Court rejected the "irresistible impulse" test for insanity defense] The committee substitute further provides that mental infirmity, disease or defect does not constitute a defense of insanity except as provided in this subsection. These provisions are substantially similar to the Arizona statute on insanity

The committee substitute also provides the following non-exclusive list of conditions that do not constitute legal insanity

- 1 moral decadence
- 2 an abnormality that is manifested only by criminal conduct
3. diminished capacity

These provisions clarify that certain conditions do not constitute insanity These conditions would probably not constitute insanity under the "M'Naghten" test For instance, as discussed earlier, "diminished capacity" cannot be used as a defense in Florida

The committee substitute also places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute. 18 U S C 17

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?

No

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

No

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

No.

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?

No.

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

No

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

No

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

No

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

No

3. Personal Responsibility:

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

No.

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?

No.

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?

No.

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 775 027.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 Provides for the defense of insanity.

Section 2 Provides that the act will take effect upon becoming a law

III FISCAL ANALYSIS & 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:

The Criminal Justice Estimating Conference has not met to determine the fiscal impact of this committee substitute but it is expected that any fiscal impact would be insignificant.

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

A APPLICABILITY OF THE MANDATES PROVISION

Because the committee substitute is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution

B REDUCTION OF REVENUE RAISING AUTHORITY

The committee substitute does not reduce anyone's revenue raising authority

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

The committee substitute does not reduce the state tax shared with counties and municipalities

V COMMENTS.

The committee substitute places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute and make it more difficult for a defendant to assert an insanity defense. In Yohn v State, 476 So.2d 123 (Fla 1985), the Florida Supreme Court recognized that in Patterson v New York, 432 U.S. 197, 97 S Ct. 2319 (1977), the United States Supreme Court held that it was not unconstitutional to place the burden on a defendant to prove he was insane at the time of the commission of the offense. However, following its own precedent, the Florida Supreme Court decided not to place the burden of proof on insanity on the defendant but rather created "a rebuttable presumption of sanity which if overcome, must be proven by the state just like any other element of the offense." The Florida Supreme Court based its decision on policy reasons and not on constitutional grounds. In Leland v Oregon, 343 U S 790, 72 S Ct. 1002 (1952), the United States Supreme Court decided that an Oregon statute which requires a defendant to establish the defense of insanity beyond a reasonable doubt did not violate due process. The burden that CS/HB 381 places on a defendant to prove insanity - proof by clear and convincing evidence - is less than the beyond a reasonable doubt burden in Leland and therefore should not present a constitutional problem.

Judiciary Committee staff comments.

The purpose of the bill is to shift the burden of proving the defense of insanity to the defendant by clear and convincing evidence. This purpose is accomplished by the end of the full sentence on line 20. The remainder of the bill is unnecessary for that purpose and may result in confusion which is perhaps best addressed by case law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

Representative Miller offered two amendments at the Committee on Crime and Punishment meeting held March 9, 1999. The first amendment deleted language from the bill which provided that a "momentary, temporary condition arising from the presence of the circumstances did not constitute legal insanity." The second amendment removed language providing that "depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental infirmity, disease or defect" did not constitute insanity. These amendments were offered after committee members expressed concern that the above quoted language would eliminate the defense of temporary insanity in Florida. The bill with the two amendments was made a committee substitute.

VII SIGNATURES

COMMITTEE ON CRIME AND PUNISHMENT.

Prepared by:

Staff Director

Trina Kramer

J. Willis Renuart

STORAGE NAME: H0381s1 jud
DATE: March 22, 1999
PAGE 8

AS REVISED BY THE COMMITTEE ON JUDICIARY
Prepared by:

Staff Director:

Jo Ann Levin

Don Rubottom

STORAGE NAME h0381s1a.jud
DATE March 31, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #. CS/HB 381
RELATING TO: Criminal Defense of Insanity
SPONSOR(S) Committee on Crime & Punishment and Representative J Miller
COMPANION BILL(S) SB 2188(l)

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (2) JUDICIARY YEAS 7 NAYS 1
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY

The committee substitute makes it more difficult for a defendant to use the insanity defense by providing that the defendant has the burden of proving the defense of insanity by clear and convincing evidence.

The committee substitute provides that it is an affirmative defense to a criminal prosecution that at the time of the commission of the offense, the defendant was insane. The committee substitute codifies current case law by providing that insanity is established when the defendant had a mental infirmity, disease or defect and because of the condition either did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong.

The committee substitute provides that a "mental infirmity, disease or defect" does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders, or irresistible impulse. The committee substitute also provides a list of conditions that do not constitute legal insanity.

II SUBSTANTIVE ANALYSIS

A PRESENT SITUATION:

Insanity

In Florida, insanity is a defense to a criminal offense According to the Florida Supreme Court:

The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule" Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong

Hall v. State, 568 So 2d 882, 888 (Fla 1990)

The relevant portions of the standard jury instruction relating to insanity states

A person is considered insane when

1. He has a mental infirmity, disease or defect.
- 2 Because of this condition
 - a. he did not know what he was doing or its consequences or
 - b. although he knew what he was doing and its consequences, he did not know it was wrong.

All persons are presumed to be sane However, if the evidence causes you to have a reasonable doubt concerning the defendant's sanity, then the presumption of sanity vanishes and the state must prove beyond a reasonable doubt that the defendant was sane

Unrestrained passion or ungovernable temper is not insanity, even though the normal judgment of the person be overcome by passion or temper

Florida Standard Jury Instruction 3.04(b).

Element of Mental Infirmity, Disease or Defect

The terms "mental infirmity, disease or defect" are not well defined by Florida courts, however, the Florida Supreme Court has indicated that trial courts should only admit expert testimony about a mental disease or defect if it is a "diagnosis recognized by authorities generally accepted in medicine, psychiatry, or psychology" State v. Bias, 653 So 2d 380 (Fla. 1995).

Diminished Capacity

In Chestnut v. State, 538 So.2d (Fla. 1989), the Florida Supreme Court ruled that evidence of an abnormal mental condition, also known as "diminished capacity" which does not constitute legal insanity is inadmissible to disprove that a defendant had the specific intent to commit the charged crime For example, in Kight v. State, 512 So 2d 922,(Fla 1987), the Florida Supreme Court held that testimony of clinical psychologist that the defendant was borderline mentally retarded with an I Q of 69 and was very dependent and passive person was inadmissible in a capital murder prosecution in the absence of the insanity defense.

Temporary Insanity

Florida courts have not distinguished between temporary and permanent insanity Insanity does not have to be of a permanent nature to be a defense to a crime Rather, in order for a defendant to be legally insane, at the time of the offense, the defendant had to have had a mental infirmity, disease or defect which rendered him unable to understand the consequences of his actions or that the actions were wrong The infirmity, disease or defect can be of a temporary nature but had to have

made the defendant unaware of what he was doing or unaware that what he was doing was wrong. Thus, a defendant who has a mental infirmity, disease or defect but who still understands the consequences of his actions would not be legally insane.

B EFFECT OF PROPOSED CHANGES

This committee substitute will codify the "M'Naghten Rule" which is currently used by Florida courts by providing that insanity is established when at the time of the offense, the defendant had a mental infirmity, disease or defect and because of this condition, did not know what he or she was doing or its consequences or did not know that what he or she was doing was wrong.

The committee substitute further provides that the element of insanity requiring proof of a mental infirmity, disease or defect is not satisfied by disorders that result from "acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or irresistible impulse." [In Wheeler v. State, 344 So.2d 244, (Fla. 1977) the Florida Supreme Court rejected the "irresistible impulse" test for insanity defense.] The committee substitute further provides that mental infirmity, disease or defect does not constitute a defense of insanity except as provided in this subsection. These provisions are substantially similar to the Arizona statute on insanity.

The committee substitute also provides the following non-exclusive list of conditions that do not constitute legal insanity:

1. moral decadence
2. an abnormality that is manifested only by criminal conduct
3. diminished capacity

These provisions clarify that certain conditions do not constitute insanity. These conditions would probably not constitute insanity under the "M'Naghten" test. For instance, as discussed earlier, "diminished capacity" cannot be used as a defense in Florida.

The committee substitute also places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute 18 U.S.C. 17.

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?

No.

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

No.

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

No.

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?

No.

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

No.

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

No

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

No

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

No.

3. Personal Responsibility:

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

No.

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?

No.

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?

No

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 775 027

E SECTION-BY-SECTION ANALYSIS:

Section 1. Provides for the defense of insanity

Section 2. Provides that the act will take effect upon becoming a law

III. FISCAL ANALYSIS & 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

The Criminal Justice Estimating Conference has not met to determine the fiscal impact of this committee substitute but it is expected that any fiscal impact would be insignificant

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

A. APPLICABILITY OF THE MANDATES PROVISION

Because the committee substitute is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution

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The committee substitute does not reduce anyone's revenue raising authority

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES.

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V. COMMENTS

The committee substitute places the burden on a defendant to prove the defense of insanity by clear and convincing evidence. This would change the current law in Florida to conform with the relevant federal statute and make it more difficult for a defendant to assert an insanity defense. In Yohn v. State, 476 So 2d 123 (Fla 1985), the Florida Supreme Court recognized that in Patterson v New York, 432 U S 197, 97 S Ct 2319 (1977), the United States Supreme Court held that it was not unconstitutional to place the burden on a defendant to prove he was insane at the time of the commission of the offense. However, following its own precedent, the Florida Supreme Court decided not to place the burden of proof on insanity on the defendant but rather created "a rebuttable presumption of sanity which if overcome, must be proven by the state just like any other element of the offense." The Florida Supreme Court based its decision on policy reasons and not on constitutional grounds. In Leland v Oregon, 343 U S. 790, 72 S Ct 1002 (1952), the United States Supreme Court decided that an Oregon statute which requires a defendant to establish the defense of insanity beyond a reasonable doubt did not violate due process. The burden that CS/HB 381 places on a defendant to prove insanity - proof by clear and convincing evidence - is less than the beyond a reasonable doubt burden in Leland and therefore should not present a constitutional problem.

Judiciary Committee staff comments.

The purpose of the bill is to shift the burden of proving the defense of insanity to the defendant by clear and convincing evidence. This purpose is accomplished by the end of the full sentence on line 20. The remainder of the bill is unnecessary for that purpose and may result in confusion which is perhaps best addressed by case law

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

Representative Miller offered two amendments at the Committee on Crime and Punishment meeting held March 9, 1999. The first amendment deleted language from the bill which provided that a "momentary, temporary condition arising from the presence of the circumstances did not constitute legal insanity." The second amendment removed language providing that "depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental infirmity, disease or defect" did not constitute insanity. These amendments were offered after committee members expressed concern that the above quoted language would eliminate the defense of temporary insanity in Florida. The bill with the two amendments was made a committee substitute.

VII. SIGNATURES.

COMMITTEE ON CRIME AND PUNISHMENT
Prepared by:

Trina Kramer

Staff Director.

J. Willis Renuart

STORAGE NAME. h0381s1a jud

DATE March 31, 1999

PAGE 8

AS REVISED BY THE COMMITTEE ON JUDICIARY

Prepared by:

Staff Director:

Jo Ann Levin

Don Rubottom

Journals
of the
Florida
House of Representatives
Volume II



Continuation of Regular Session, 1999
April 22 through April 27, 1999

The Journals with indices are available on the
Internet at <http://www.leg.state.fl.us/>



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insert

Section 3 Subsection (1) of section 628 729, Florida Statutes, is amended to read

628 729 Member's share of assets on voluntary dissolution --

(1) Upon any voluntary dissolution of a domestic mutual insurance holding company, its assets remaining after discharge of its indebtedness, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within the 3-year period preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is earlier, except, if the department has reason to believe that those in charge of the management of the mutual insurance holding company have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be entitled to share in distribution of the insurer's assets, the department may enlarge the 3-year 5-year qualification period by such additional time as the department may deem to be reasonable

And the title is amended as follows

On page 1, line 12

after the semicolon, insert amending s 628 729, F.S., revising the qualification period,

The Committee on Insurance offered the following

Amendment 2—On page 2, lines 6 & 25 remove from the bill "customers"

and insert in lieu thereof policyholders

The Committee on Insurance offered the following

Amendment 3 (with directory language and title amendments)—On page 1, between lines 28 & 29 of the bill

insert

(2) A reorganization pursuant to this section is subject to the applicable procedures prescribed by the laws of this state applying to corporations formed for profit, except as otherwise provided in this subsection

(b) No such merger shall be effectuated unless in advance thereof, the plan and agreement therefor have been filed with the department and approved by it. The department may retain outside consultants to evaluate each merger. The domestic mutual insurance holding company shall pay reasonable costs associated with retaining such consultants. Such payments shall be made directly to the consultant. The department shall give such approval unless it finds such plan or agreement

1 Is inequitable to the policyholders of any domestic insurer involved in the merger or the members of any domestic mutual insurance holding company involved in the merger, or

2 Would substantially reduce the security of and service to be rendered to policyholders of a domestic insurer in this state

And the directory language is amended as follows

On page 1 lines 17 & 18 remove all of said lines

and insert in lieu thereof

Section 1 Paragraph B is added to subsection 1 of section 628 715, Florida Statutes, and paragraph (b) of subsection (2) of said section is amended to read

And the title is amended as follows

On page 1 line 7

after the semicolon insert providing for the use of consultants

Rep Tullis moved the adoption of the committee amendments, which were adopted en bloc

Under Rule 121(b), the bill was referred to the Engrossing Clerk

HB 2119 was temporarily postponed under Rule 141

CS/HB 381—A bill to be entitled An act relating to the criminal defense of insanity, creating s 775 027, F.S., providing requirements for establishment of insanity defense, defining "mental infirmity, disease, or defect", specifying conditions that do not constitute legal insanity, providing that the defendant has the burden of proving the insanity defense by clear and convincing evidence, providing an effective date

—was read the second time by title

On motion by Rep Warner, under Rule 142(h), the following late-filed amendment was considered

Representative(s) Warner offered the following

Amendment 1—On page 2, lines 1 through 10 remove from the bill

All of said lines

Rep Warner moved the adoption of the amendment, which was adopted

Under Rule 121(b), the bill was referred to the Engrossing Clerk

CS/CS/HB 291—A bill to be entitled An act relating to homestead exemption, creating s 195 075, F.S., authorizing boards of county commissioners and municipal governing authorities to grant by ordinance an additional homestead exemption for persons 65 and older whose household income does not exceed a specified amount, defining the terms "household" and "household income", providing requirements for the ordinances, providing an effective date

—was read the second time by title and, under Rule 121(b), referred to the Engrossing Clerk

HB 1737—A bill to be entitled An act relating to ad valorem taxation, amending s 193 063, F.S., requiring, rather than authorizing, the property appraiser to grant an extension for filing a tangible personal property tax return upon request for a specified period, authorizing an additional discretionary extension, revising requirements relating to requests for extension, providing an effective date

—was read the second time by title and, under Rule 121(b), referred to the Engrossing Clerk

CS/HB 253—A bill to be entitled An act relating to county and municipal jails, amending s 951 21, F.S., providing that the gain-time awarded to county prisoners by the board of county commissioners is optional, deleting a provision requiring that the allowances awarded to county prisoners for good behavior be awarded according to the policy of the Department of Corrections for such awards for state prisoners, amending s 951 23, F.S., providing that it is a second degree misdemeanor for a prisoner to knowingly and willfully refuse to obey certain rules governing prisoner conduct providing an effective date

—was read the second time by title

The Committee on Crime & Punishment offered the following

Amendment 1—On page 1, line 25, after the word "and", remove from the bill "The

and insert in lieu thereof "If the board of commissioners authorizes commutation of time for good conduct, the

Rep Trovillion moved the adoption of the amendment

Representative(s) Trovillion offered the following

Amendment 1 to Amendment 1 (with title amendment)—On page 1 lines 13 15 remove from the amendment all of said lines

1 A bill to be entitled
2 An act relating to evidence; creating s.
3 90.959, F.S.; providing that evidence of
4 voluntary intoxication is not admissible for
5 certain purposes; providing an exception;
6 providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 90.959, Florida Statutes, is
11 created to read:

12 90.959 Voluntary intoxication; not a defense; evidence
13 not admissible for certain purposes; exception.--Voluntary
14 intoxication resulting from the consumption, injection, or
15 other use of alcohol or other controlled substance as
16 described in chapter 893 is not a defense to any offense
17 proscribed by law. Evidence of a defendant's voluntary
18 intoxication is not admissible to show that the defendant
19 lacked the specific intent to commit an offense and is not
20 admissible to show that the defendant was insane at the time
21 of the offense, except when the consumption, injection, or use
22 of a controlled substance under chapter 893 was pursuant to a
23 lawful prescription issued by a practitioner as defined in s.
24 893.02.

25 Section 2. This act shall take effect October 1, 1999.
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HOUSE SUMMARY

Provides that voluntary intoxication from the consumption, injection, or other use of alcohol or controlled substances as described in ch. 893, F.S., is not a defense to any offense committed under the Florida Statutes. Provides that evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense, except when the consumption, injection, or other use of a controlled substance was pursuant to a lawful prescription issued by a licensed practitioner.

STORAGE NAME h0421 cp
DATE February 16, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL # HB 421
RELATING TO Evidence
SPONSOR(S) Representative Lacasa
COMPANION BILL(S) S902(s)

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

- (1) CRIME AND PUNISHMENT
- (2) JUDICIARY
- (3)
- (4)
- (5)

I SUMMARY

Creates section 90 959 which provides that voluntary intoxication resulting from the consumption of alcohol or a controlled substance is not a defense to any offense. Evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense except when the use of a controlled substance was pursuant to a lawful prescription

II SUBSTANTIVE ANALYSIS.

A PRESENT SITUATION

Voluntary intoxication is recognized in Florida as a defense to a specific intent crime Frey v State, 708 So 2d 918 (Fla. 1998) Specific intent is an intent "to accomplish the precise act which the law prohibits" Id. Voluntary intoxication is a defense to a crime when a certain mental state is an essential element of a crime, and a person was so intoxicated that he or she was incapable of forming that mental state Florida Standard Jury Instruction 3 04(g) Voluntary intoxication is not a statutory defense but has developed through case law

The burden is on a defendant to come forward with evidence that he was intoxicated at the time of the offense. If a defendant submits any evidence that the defendant was intoxicated at the time of the offense, the jury must be given a voluntary intoxication instruction. Leschka v. State, 695 So 2d 535 (Fla. 2nd DCA 1997) "Evidence of alcohol consumption prior to the commission of the crime does not, by itself, mandate the giving of a jury instruction with regard to voluntary intoxication" Watkins v State, 519 So 2d 760, (Fla 1st DCA 1988) However, if a defendant comes forward with evidence that he was intoxicated at the time of the offense and the trial court refuses to read the voluntary intoxication instruction to the jury, the case is often reversed on appeal. For example, in Leschka, the defendant and the victim testified to the use of intoxicants and evidence was submitted to the jury which indicated that the defendant was intoxicated The trial court allowed the defense to argue voluntary intoxication to the jury but would not instruct the jury on the defense The Second District reversed the conviction finding that "the amount of evidence of intoxication presented crossed the threshold of legal sufficiency so that the appellant should have had the jury instructed on his defense of voluntary intoxication" Leschka, 695 So 2d at 536

In recent concurring opinions in a Florida Supreme Court case, Justice Harding and Justice Grimes recommended that either the Court or legislature consider abolishing the voluntary intoxication defense Frey v State, 708 So 2d 918 (Fla. 1998) These justices also noted the difficulty in determining whether a crime is a specific or a general intent crime and therefore whether the voluntary intoxication defense applies See also Carter v State, 710 So 2d 110 (Fla 4th DCA 1998)(noting that "the distinction between specific and general intent crimes is not an easy one.") For example, first degree murder, robbery, kidnapping, aggravated assault and battery are specific intent crimes while arson, second-degree murder, false imprisonment and resisting a police officer with violence are general intent crimes Frye

B EFFECT OF PROPOSED CHANGES.

The bill creates section 90.959 which provides that evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense However, if the intoxication was caused by a controlled substance which was taken pursuant to a lawful prescription issued by a practitioner, the evidence can be admitted

In Montana v Egelhoff, 518 U.S. 37, 116 S Ct 2013 (1996), the United States Supreme Court held that the Montana statute banning the voluntary intoxication defense did not violate due process The provisions of HB 421 are substantially similar to those contained in the Montana statute

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?

N/A

(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?

N/A

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

N/A

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 90 959.

E SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that defendant was insane at time of offense

Section 2. Provides effective date of October 1, 1999.

III FISCAL ANALYSIS & 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:

The Criminal Justice Estimating Conference has not met to determine the economic impact of this bill. This bill removes a defense in criminal cases and may have a slight economic impact.

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

A APPLICABILITY OF THE MANDATES PROVISION

Article VII, Section 18 is inapplicable to the bill because it deals with a criminal statute

B. REDUCTION OF REVENUE RAISING AUTHORITY.

The bill does not reduce anyone's revenue raising authority

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

The bill does not reduce the state tax shared with counties and municipalities

V COMMENTS

The segment of the bill that provides that a defendant may submit evidence of his intoxication when the intoxication occurred as a result of the defendant taking a controlled substance prescribed by a practitioner is part of the involuntary intoxication defense which already exists in Florida. The principle behind this defense is that a person would not expect that they would become intoxicated by taking a substance which has been prescribed to them, if they take the substance according to the prescription. Brancaccio v. State, 698 So 2d 597 (Fla 4th DCA 1997). The defense does not just apply to a defendant who becomes intoxicated after taking his or her prescription. For example, in Carter v. State, 710 So.2d 110 (Fla 4th DCA 1998), the defendant claimed that his friend gave him what he thought were four ibuprofen tablets. The defendant's friend testified that she inadvertently gave the defendant some of her lawfully prescribed psychiatric medicine. The Fourth District reversed the conviction, ruling that the defendant should have received an involuntary intoxication instruction.

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

None.

STORAGE NAME. h0421 cp
DATE. February 16, 1999
PAGE 7

VII SIGNATURES

COMMITTEE ON CRIME AND PUNISHMENT
Prepared by

Staff Director:

Trina Kramer

J Willis Renuart

By the Committee on Crime & Punishment and Representatives
Lacasa and Hart

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A bill to be entitled
An act relating to evidence; providing that
evidence of voluntary intoxication is not
admissible for certain purposes; providing an
exception; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Voluntary intoxication; not a defense;
evidence not admissible for certain purposes;
exception.--Voluntary intoxication resulting from the
consumption, injection, or other use of alcohol or other
controlled substance as described in chapter 893, Florida
Statutes, is not a defense to any offense proscribed by law.
Evidence of a defendant's voluntary intoxication is not
admissible to show that the defendant lacked the specific
intent to commit an offense and is not admissible to show that
the defendant was insane at the time of the offense, except
when the consumption, injection, or use of a controlled
substance under chapter 893, Florida Statutes, was pursuant to
a lawful prescription issued to the defendant by a
practitioner as defined in s. 893.02, Florida Statutes.

Section 2. This act shall take effect October 1, 1999.

STORAGE NAME h0421s1 cp
DATE March 3, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL # CS/HB 421/485

RELATING TO: Evidence

SPONSOR(S) Committee on Crime & Punishment and Representatives Lacasa and Hart.

COMPANION BILL(S). S902(s)

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

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (2) JUDICIARY
 - (3)
 - (4)
 - (5)
-

I SUMMARY

This committee substitute provides that voluntary intoxication resulting from the consumption of alcohol or a controlled substance is not a defense to any offense. Evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense except when the use of a controlled substance was pursuant to a lawful prescription

The bill with two amendments, was made a committee substitute for HB 421 and HB 485.

II SUBSTANTIVE ANALYSIS:

A PRESENT SITUATION

Voluntary Intoxication Relevant to Specific Intent

In Florida, there are two different types of crimes - general and specific intent crimes. A specific intent crime requires proof of an intent "to accomplish the precise act which the law prohibits." Frey v State, 708 So.2d 918 (Fla. 1998). On the other hand, for a general intent crime, it is "not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated." Id. Voluntary intoxication is recognized in Florida as a defense to a specific intent crime. According to the Florida Standard Jury Instruction 304(g)

The use of alcohol or drugs to the extent that it merely arouses passions, diminishes perceptions, releases inhibitions or clouds reason and judgment does not excuse the commission of a criminal act

However, where a certain mental state is an essential element of a crime, and a person was so intoxicated that he was incapable of forming that mental state, the mental state would not exist and therefore the crime could not be committed

Voluntary intoxication is not a statutory defense but has developed through case law.

The burden is on a defendant to come forward with evidence that he was intoxicated at the time of the offense. If a defendant submits any evidence that the defendant was intoxicated at the time of the offense, the jury must be given a voluntary intoxication instruction. Leschka v State, 695 So.2d 535 (Fla. 2nd DCA 1997). "Evidence of alcohol consumption prior to the commission of the crime does not, by itself, mandate the giving of a jury instruction with regard to voluntary intoxication." Watkins v State, 519 So.2d 760, (Fla. 1st DCA 1988). However, if a defendant comes forward with evidence that he was intoxicated at the time of the offense and the trial court refuses to read the voluntary intoxication instruction to the jury, the case is often reversed on appeal. For example, in Leschka, the defendant and the victim testified to the use of intoxicants and evidence was submitted to the jury which indicated that the defendant was intoxicated. The trial court allowed the defense to argue voluntary intoxication to the jury but would not instruct the jury on the defense. The Second District reversed the conviction finding that "the amount of evidence of intoxication presented crossed the threshold of legal sufficiency so that the appellant should have had the jury instructed on his defense of voluntary intoxication." Leschka, 695 So.2d at 536

In recent concurring opinions in a Florida Supreme Court case, Justice Harding and Justice Grimes recommended that either the Court or legislature consider abolishing the voluntary intoxication defense. Frey v State, 708 So.2d 918 (Fla. 1998). These justices also noted the difficulty in determining whether a crime is a specific or a general intent crime and therefore whether the voluntary intoxication defense applies. See also Carter v State, 710 So.2d 110 (Fla. 4th DCA 1998) (noting that "the distinction between specific and general intent crimes is not an easy one.") For example, first degree murder, robbery, kidnapping, aggravated assault and battery are specific intent crimes while arson, second-degree murder, false imprisonment and resisting a police officer with violence are general intent crimes. Frye

Voluntary Intoxication Relevant to Insanity

In Florida, insanity is a defense to a criminal offense. According to the Florida Supreme Court

The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule." Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong.

Hall v State, 568 So.2d 882, 888 (Fla. 1990). In Street v. State, 636 So.2d 1297, the defendant was intoxicated due to the use of cocaine at the time that he committed a number of crimes. In the opinion, the Florida Supreme Court stated that the trial court properly refused to allow an

expert to testify that the defendant was suffering from the mental infirmity of "cocaine psychosis" because the defendant had not raised an insanity defense. Thus, it is possible that courts would allow a defendant to claim that his or her intoxication was a "mental infirmity, disease or defect" that rendered the defendant unable to understand the nature or consequences of his or her actions if the defendant raised the insanity defense

B EFFECT OF PROPOSED CHANGES

The committee substitute provides that evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense. However, if the intoxication was caused by a controlled substance which was taken pursuant to a lawful prescription issued by a practitioner, the evidence can be admitted to demonstrate a lack of "specific intent" for those crimes such as first degree murder which require specific intent

In Montana v. Egelhoff, 518 U.S. 37, 116 S.Ct. 2013 (1996), the United States Supreme Court held that the Montana statute banning the voluntary intoxication defense did not violate due process. The provisions of HB 421 are substantially similar to those contained in the Montana statute

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?

N/A

(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?

N/A

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

N/A

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.

None.

E SECTION-BY-SECTION ANALYSIS.

Section 1: Provides that evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that defendant was insane at time of offense

Section 2: Provides effective date of October 1, 1999

III FISCAL ANALYSIS & 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

The Criminal Justice Estimating Conference has not met to determine the economic impact of this committee substitute. This committee substitute removes a defense in criminal cases and may have a slight economic impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION

Article VII, Section 18 is inapplicable to the committee substitute because it deals with a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY

The committee substitute does not reduce anyone's revenue raising authority

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

The committee substitute does not reduce the state tax shared with counties and municipalities

V COMMENTS:

The segment of the committee substitute that provides that a defendant may submit evidence of his intoxication when the intoxication occurred as a result of the defendant taking a controlled substance prescribed by a practitioner is part of the involuntary intoxication defense which already exists in Florida. The principle behind this defense is that a person would not expect that they would become intoxicated by taking a substance which has been prescribed to them, if they take the substance according to the prescription. Brancaccio v. State, 698 So 2d 597 (Fla 4th DCA 1997). The defense does not just apply to a defendant who becomes intoxicated after taking his or her prescription. For example, in Carter v. State, 710 So 2d 110 (Fla.4th DCA 1998), the defendant claimed that his friend gave him what he thought were four ibuprofen tablets. The defendant's friend testified that she inadvertently gave the defendant some of her lawfully prescribed psychiatric medicine. The Fourth District reversed the conviction, ruling that the defendant should have received an involuntary intoxication instruction.

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, the Committee on Crime and Punishment met and Representative Lacasa offered two amendments to the bill. The first amendment clarifies that in order for a defendant to use the defense of voluntary intoxication when the consumption of the controlled substance was pursuant to a prescription, the prescription had to have been issued to the defendant and not to another person.

The second amendment removed reference to the bill as creating section 90.959 of Florida Statute. This was offered in order that the new statute be placed somewhere other than in chapter 90, which is the evidence code.

A third amendment, relating to the hiring, leasing or obtaining personal property with the intent to deprive, offered by Representatives Crist and Hart was withdrawn.

The Crime and Punishment Committee adopted the remaining two amendments and the bill, with its amendments was made a committee substitute for HB 421 and HB 485.

VII SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT.
Prepared by:

Staff Director.

Trina Kramer

J Willis Renuart

STORAGE NAME. h0421s1 jud
DATE March 29, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HBs 421/485
RELATING TO: Evidence
SPONSOR(S) Representatives Lacasa and Hart
COMPANION BILL(S) S902(s)

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

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
- (2) JUDICIARY
- (3)
- (4)
- (5)

I SUMMARY:

This committee substitute provides that voluntary intoxication resulting from the consumption of alcohol or a controlled substance is not a defense to any offense. Evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense except when the use of a controlled substance was pursuant to a lawful prescription.

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II. SUBSTANTIVE ANALYSIS

A PRESENT SITUATION

Voluntary Intoxication Relevant to Specific Intent

In Florida, there are two different types of crimes - general and specific intent crimes. A specific intent crime requires proof of an intent "to accomplish the precise act which the law prohibits." Frey v. State, 708 So.2d 918 (Fla. 1998). On the other hand, for a general intent crime, it is "not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated." Id. Voluntary intoxication is recognized in Florida as a defense to a specific intent crime. According to the Florida Standard Jury Instruction 3.04(g)

The use of alcohol or drugs to the extent that it merely arouses passions, diminishes perceptions, releases inhibitions or clouds reason and judgment does not excuse the commission of a criminal act.

However, where a certain mental state is an essential element of a crime, and a person was so intoxicated that he was incapable of forming that mental state, the mental state would not exist and therefore the crime could not be committed.

Voluntary intoxication is not a statutory defense but has developed through case law.

The burden is on a defendant to come forward with evidence that he was intoxicated at the time of the offense. If a defendant submits any evidence that the defendant was intoxicated at the time of the offense, the jury must be given a voluntary intoxication instruction. Leschka v. State, 695 So.2d 535 (Fla. 2nd DCA 1997). "Evidence of alcohol consumption prior to the commission of the crime does not, by itself, mandate the giving of a jury instruction with regard to voluntary intoxication." Watkins v. State, 519 So.2d 760, (Fla. 1st DCA 1988). However, if a defendant comes forward with evidence that he was intoxicated at the time of the offense and the trial court refuses to read the voluntary intoxication instruction to the jury, the case is often reversed on appeal. For example, in Leschka, the defendant and the victim testified to the use of intoxicants and evidence was submitted to the jury which indicated that the defendant was intoxicated. The trial court allowed the defense to argue voluntary intoxication to the jury but would not instruct the jury on the defense. The Second District reversed the conviction finding that "the amount of evidence of intoxication presented crossed the threshold of legal sufficiency so that the appellant should have had the jury instructed on his defense of voluntary intoxication." Leschka, 695 So.2d at 536.

In recent concurring opinions in a Florida Supreme Court case, Justice Harding and Justice Grimes recommended that either the Court or legislature consider abolishing the voluntary intoxication defense. Frey v. State, 708 So.2d 918 (Fla. 1998). These justices also noted the difficulty in determining whether a crime is a specific or a general intent crime and therefore whether the voluntary intoxication defense applies. See also Carter v. State, 710 So.2d 110 (Fla. 4th DCA 1998) (noting that "the distinction between specific and general intent crimes is not an easy one.") For example, first degree murder, robbery, kidnapping, aggravated assault and battery are specific intent crimes while arson, second-degree murder, arson, false imprisonment and resisting a police officer with violence are general intent crimes. Frye

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Hall v. State, 568 So 2d 882, 888 (Fla. 1990). In Street v. State, 636 So 2d 1297, the defendant was intoxicated due to the use of cocaine at the time that he committed a number of crimes. In the opinion, the Florida Supreme Court stated that the trial court properly refused to allow an expert to testify that the defendant was suffering from the mental infirmity of "cocaine psychosis" because the defendant had not raised an insanity defense. Thus, it is possible that courts would allow a defendant to claim that his or her intoxication was a "mental infirmity, disease or defect" that rendered the defendant unable to understand the nature or consequences of his or her actions if the defendant raised the insanity defense.

B EFFECT OF PROPOSED CHANGES

The committee substitute provides that evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense. However, if the intoxication was caused by a controlled substance which was taken pursuant to a lawful prescription issued by a practitioner, the evidence can be admitted to demonstrate a lack of "specific intent" for those crimes such as first degree murder which require specific intent.

In Montana v. Egelhoff, 518 U S 37, 116 S Ct 2013 (1996), the United States Supreme Court held that the Montana statute banning the voluntary intoxication defense did not violate due process. The provisions of HB 421 are substantially similar to those contained in the Montana statute.

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?

N/A

(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?

N/A

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

N/A

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?

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(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:

None

E SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that defendant was insane at time of offense

Section 2: Provides effective date of October 1, 1999

III FISCAL ANALYSIS & 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:

The Criminal Justice Estimating Conference has not met to determine the economic impact of this committee substitute. This committee substitute removes a defense in criminal cases and may have a slight economic impact.

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

A APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 is inapplicable to the committee substitute because it deals with a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY.

The committee substitute does not reduce anyone's revenue raising authority.

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce the state tax shared with counties and municipalities.

V COMMENTS

The segment of the committee substitute that provides that a defendant may submit evidence of his intoxication when the intoxication occurred as a result of the defendant taking a controlled substance prescribed by a practitioner is part of the involuntary intoxication defense which already exists in Florida. The principle behind this defense is that a person would not expect that they would become intoxicated by taking a substance which has been prescribed to them, if they take the substance according to the prescription. Brancaccio v State, 698 So 2d 597 (Fla. 4th DCA 1997). The defense does not just apply to a defendant who becomes intoxicated after taking his or her prescription. For example, in Carter v State, 710 So 2d 110 (Fla. 4th DCA 1998), the defendant claimed that his friend gave him what he thought were four ibuprofen tablets. The defendant's friend testified that she inadvertently gave the defendant some of her lawfully prescribed psychiatric medicine. The Fourth District reversed the conviction, ruling that the defendant should have received an involuntary intoxication instruction.

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 1999, the Committee on Crime and Punishment met and Representative Lacasa offered two amendments to the bill. The first amendment clarifies that in order for a defendant to use the defense of voluntary intoxication when the consumption of the controlled substance was pursuant to a prescription, the prescription had to have been issued to the defendant and not to another person.

The second amendment removed reference to the bill as creating section 90.959 of Florida Statute. This was offered in order that the new statute be placed somewhere other than in chapter 90, which is the evidence code.

A third amendment, relating to the hiring, leasing or obtaining personal property with the intent to deprive, offered by Representatives Crist and Hart was withdrawn.

The Crime and Punishment Committee adopted the remaining two amendments and the bill, with its amendments was made a committee substitute for HB 421 and HB 485.

VII SIGNATURES

COMMITTEE ON CRIME AND PUNISHMENT

Prepared by.

Staff Director

Trina Kramer

J. Willis Renuart

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by.

Staff Director

Jo Ann Levin

Don Rubottom

STORAGE NAME h0421s1a.jud
DATE March 31, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL # CS/HBs 421 & 485
RELATING TO Evidence
SPONSOR(S) Representatives Lacasa and Hart
COMPANION BILL(S) S902(s)

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

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (2) JUDICIARY YEAS 8 NAYS 0
 - (3)
 - (4)
 - (5)
-

I SUMMARY:

This committee substitute provides that voluntary intoxication resulting from the consumption of alcohol or a controlled substance is not a defense to any offense. Evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense except when the use of a controlled substance was pursuant to a lawful prescription.

The bill with two amendments, was made a committee substitute for HB 421 and HB 485

II SUBSTANTIVE ANALYSIS

A PRESENT SITUATION.

Voluntary Intoxication Relevant to Specific Intent

In Florida, there are two different types of crimes - general and specific intent crimes. A specific intent crime requires proof of an intent "to accomplish the precise act which the law prohibits." Frey v State, 708 So 2d 918 (Fla 1998). On the other hand, for a general intent crime, it is "not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated." Id. Voluntary intoxication is recognized in Florida as a defense to a specific intent crime. According to the Florida Standard Jury Instruction 3.04(g)

The use of alcohol or drugs to the extent that it merely arouses passions, diminishes perceptions, releases inhibitions or clouds reason and judgment does not excuse the commission of a criminal act.

However, where a certain mental state is an essential element of a crime, and a person was so intoxicated that he was incapable of forming that mental state, the mental state would not exist and therefore the crime could not be committed.

Voluntary intoxication is not a statutory defense but has developed through case law

The burden is on a defendant to come forward with evidence that he was intoxicated at the time of the offense. If a defendant submits any evidence that the defendant was intoxicated at the time of the offense, the jury must be given a voluntary intoxication instruction. Leschka v. State, 695 So 2d 535 (Fla. 2nd DCA 1997). "Evidence of alcohol consumption prior to the commission of the crime does not, by itself, mandate the giving of a jury instruction with regard to voluntary intoxication." Watkins v State, 519 So 2d 760, (Fla 1st DCA 1988). However, if a defendant comes forward with evidence that he was intoxicated at the time of the offense and the trial court refuses to read the voluntary intoxication instruction to the jury, the case is often reversed on appeal. For example, in Leschka, the defendant and the victim testified to the use of intoxicants and evidence was submitted to the jury which indicated that the defendant was intoxicated. The trial court allowed the defense to argue voluntary intoxication to the jury but would not instruct the jury on the defense. The Second District reversed the conviction finding that "the amount of evidence of intoxication presented crossed the threshold of legal sufficiency so that the appellant should have had the jury instructed on his defense of voluntary intoxication." Leschka, 695 So 2d at 536

In recent concurring opinions in a Florida Supreme Court case, Justice Harding and Justice Grimes recommended that either the Court or legislature consider abolishing the voluntary intoxication defense. Frey v State, 708 So.2d 918 (Fla 1998). These justices also noted the difficulty in determining whether a crime is a specific or a general intent crime and therefore whether the voluntary intoxication defense applies. See also Carter v State, 710 So 2d 110 (Fla 4th DCA 1998) (noting that "the distinction between specific and general intent crimes is not an easy one"). For example, first degree murder, robbery, kidnapping, aggravated assault and battery are specific intent crimes while arson, second-degree murder, false imprisonment and resisting a police officer with violence are general intent crimes. Frye

Voluntary Intoxication Relevant to Insanity

In Florida, insanity is a defense to a criminal offense. According to the Florida Supreme Court

The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule." Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong.

Hall v State, 568 So 2d 882, 888 (Fla. 1990). In Street v. State, 636 So 2d 1297, the defendant was intoxicated due to the use of cocaine at the time that he committed a number of crimes. In the opinion, the Florida Supreme Court stated that the trial court properly refused to allow an expert to testify that the defendant was suffering from the mental infirmity of "cocaine psychosis" because the defendant had not raised an insanity defense. Thus, it is possible that courts would allow a defendant to claim that his or her intoxication was a "mental infirmity, disease or defect" that rendered the defendant unable to understand the nature or consequences of his or her actions if the defendant raised the insanity defense.

B EFFECT OF PROPOSED CHANGES

The committee substitute provides that evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense. However, if the intoxication was caused by a controlled substance which was taken pursuant to a lawful prescription issued by a practitioner, the evidence can be admitted to demonstrate a lack of "specific intent" for those crimes such as first degree murder which require specific intent.

In Montana v Egelhoff, 518 U.S. 37, 116 S.Ct. 2013 (1996), the United States Supreme Court held that the Montana statute banning the voluntary intoxication defense did not violate due process. The provisions of HB 421 are substantially similar to those contained in the Montana statute.

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?

N/A

(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?

N/A

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

N/A

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.

None

E SECTION-BY-SECTION ANALYSIS

Section 1: Provides that evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that defendant was insane at time of offense

Section 2: Provides effective date of October 1, 1999

III. FISCAL ANALYSIS & 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:

The Criminal Justice Estimating Conference has not met to determine the economic impact of this committee substitute. This committee substitute removes a defense in criminal cases and may have a slight economic impact

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

A APPLICABILITY OF THE MANDATES PROVISION

Article VII, Section 18 is inapplicable to the committee substitute because it deals with a criminal statute

B REDUCTION OF REVENUE RAISING AUTHORITY

The committee substitute does not reduce anyone's revenue raising authority.

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

The committee substitute does not reduce the state tax shared with counties and municipalities

V COMMENTS

The segment of the committee substitute that provides that a defendant may submit evidence of his intoxication when the intoxication occurred as a result of the defendant taking a controlled substance prescribed by a practitioner is part of the involuntary intoxication defense which already exists in Florida. The principle behind this defense is that a person would not expect that they would become intoxicated by taking a substance which has been prescribed to them, if they take the substance according to the prescription. Brancaccio v State, 698 So 2d 597 (Fla. 4th DCA 1997). The defense does not just apply to a defendant who becomes intoxicated after taking his or her prescription. For example, in Carter v State, 710 So.2d 110 (Fla 4th DCA 1998), the defendant claimed that his friend gave him what he thought were four ibuprofen tablets. The defendant's friend testified that she inadvertently gave the defendant some of her lawfully prescribed psychiatric medicine. The Fourth District reversed the conviction, ruling that the defendant should have received an involuntary intoxication instruction.

VI AMENDMENTS OR COMMITTEE SUBSTITUTION CHANGES.

On March 3, 1999, the Committee on Crime and Punishment met and Representative Lacasa offered two amendments to the bill. The first amendment clarifies that in order for a defendant to use the defense of voluntary intoxication when the consumption of the controlled substance was pursuant to a prescription, the prescription had to have been issued to the defendant and not to another person.

The second amendment removed reference to the bill as creating section 90.959 of Florida Statute. This was offered in order that the new statute be placed somewhere other than in chapter 90, which is the evidence code.

A third amendment, relating to the hiring, leasing or obtaining personal property with the intent to deprive, offered by Representatives Crist and Hart was withdrawn.

The Crime and Punishment Committee adopted the remaining two amendments and the bill, with its amendments was made a committee substitute for HB 421 and HB 485.

VII SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

Trina Kramer

J. Willis Renuart

AS REVISED BY THE COMMITTEE ON JUDICIARY

Prepared by:

Staff Director

Jo Ann Levin

Don Rubottom

STORAGE NAME. h0421s1z cp
DATE: May 14, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
FINAL ANALYSIS**

BILL #. CS/HBs 421 & 485

RELATING TO: Evidence

SPONSOR(S): Committee on Crime and Punishment, Representatives Lacasa and Hart

COMPANION BILL(S) S902(s)

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

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
- (2) JUDICIARY YEAS 8 NAYS 0
- (3)
- (4)
- (5)

I FINAL ACTION STATUS:

CS/HB 421/485 was approved by the Governor on May 14, 1999 and became Chapter 99-174

II SUMMARY

Committee Substitute for HB 421 and HB 485 provides that voluntary intoxication resulting from the consumption of alcohol or a controlled substance is not a defense to any offense. Evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense except when the use of a controlled substance was pursuant to a lawful prescription issued to the defendant.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION

Voluntary Intoxication Relevant to Specific Intent

In Florida, there are two different types of crimes - general and specific intent crimes. A specific intent crime requires proof of an intent "to accomplish the precise act which the law prohibits." Frey v. State, 708 So.2d 918 (Fla. 1998). On the other hand, for a general intent crime, it is "not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated." Id. Voluntary intoxication is recognized in Florida as a defense to a specific intent crime. According to the Florida Standard Jury Instruction 3.04(g)

The use of alcohol or drugs to the extent that it merely arouses passions, diminishes perceptions, releases inhibitions or clouds reason and judgment does not excuse the commission of a criminal act.

However, where a certain mental state is an essential element of a crime, and a person was so intoxicated that he was incapable of forming that mental state, the mental state would not exist and therefore the crime could not be committed.

Voluntary intoxication is not a statutory defense but has developed through case law. The burden is on a defendant to come forward with evidence that he was intoxicated at the time of the offense. If a defendant submits any evidence that the defendant was intoxicated at the time of the offense, the jury must be given a voluntary intoxication instruction. Leschka v. State, 695 So.2d 535 (Fla. 2nd DCA 1997). "Evidence of alcohol consumption prior to the commission of the crime does not, by itself, mandate the giving of a jury instruction with regard to voluntary intoxication." Watkins v. State, 519 So.2d 760, (Fla. 1st DCA 1988). However, if a defendant comes forward with evidence that he was intoxicated at the time of the offense and the trial court refuses to read the voluntary intoxication instruction to the jury, the case is often reversed on appeal. For example, in Leschka, the defendant and the victim testified to the use of intoxicants and evidence was submitted to the jury which indicated that the defendant was intoxicated. The trial court allowed the defense to argue voluntary intoxication to the jury but would not instruct the jury on the defense. The Second District reversed the conviction finding that "the amount of evidence of intoxication presented crossed the threshold of legal sufficiency so that the appellant should have had the jury instructed on his defense of voluntary intoxication." Leschka, 695 So.2d at 536.

In recent concurring opinions in a Florida Supreme Court case, Justice Harding and Justice Grimes recommended that either the Court or legislature consider abolishing the voluntary intoxication defense. Frey v. State, 708 So.2d 918 (Fla. 1998). These justices also noted the difficulty in determining whether a crime is a specific or a general intent crime and therefore whether the voluntary intoxication defense applies. See also Carter v. State, 710 So.2d 110 (Fla. 4th DCA 1998) (noting that "the distinction between specific and general intent crimes is not an easy one.") For example, first degree murder, robbery, kidnapping, aggravated assault and battery are specific intent crimes while arson, second-degree murder, false imprisonment and resisting a police officer with violence are general intent crimes. Frye

Voluntary Intoxication Relevant to Insanity

In Florida, insanity is a defense to a criminal offense. According to the Florida Supreme Court

The legal test of insanity in Florida, for criminal purposes, has long been the so-called "M'Naghten Rule." Under the M'Naghten Rule an accused is not criminally responsible if, at the time of the alleged crime, the defendant was by reason of mental infirmity, disease, or defect unable to understand the nature and quality of his act or its consequences or was incapable of distinguishing right from wrong.

Hall v State, 568 So.2d 882, 888 (Fla 1990)

In Street v State, 636 So.2d 1297, the defendant was intoxicated due to the use of cocaine at the time that he committed a number of crimes. In the opinion, the Florida Supreme Court stated that the trial court properly refused to allow an expert to testify that the defendant was suffering from the mental infirmity of "cocaine psychosis" because the defendant had not raised an insanity defense. By implication, it is possible that courts would allow a defendant to claim that his or her intoxication was a "mental infirmity, disease or defect" that rendered the defendant unable to understand the nature or consequences of his or her actions if the defendant raised the insanity defense.

B. EFFECT OF PROPOSED CHANGES:

The committee substitute provides that evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense. However, if the intoxication was caused by a controlled substance which was taken pursuant to a lawful prescription issued by a practitioner to the defendant, the evidence can be admitted to demonstrate a lack of "specific intent" for those crimes such as first degree murder which require specific intent.

In Montana v Egelhoff, 518 U.S. 37, 116 S.Ct. 2013 (1996), the United States Supreme Court held that the Montana statute banning the voluntary intoxication defense did not violate due process. The provisions of HB 421 are substantially similar to those contained in the Montana statute.

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?

No

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

No

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

No

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?
No.
- b. Does the bill require or authorize an increase in any fees?
No
- c Does the bill reduce total taxes, both rates and revenues?
No
- d Does the bill reduce total fees, both rates and revenues?
No.
- e Does the bill authorize any fee or tax increase by any local government?
No

3 Personal Responsibility.

- a Does the bill reduce or eliminate an entitlement to government services or subsidy?
No.
- 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?
No.

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?

No

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 a new section of statute

E. SECTION-BY-SECTION ANALYSIS:

Section 1 Provides that evidence of voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that defendant was insane at time of offense except when the use of the controlled substance was pursuant to a lawful prescription.

Section 2: Provides effective date of October 1, 1999

IV FISCAL ANALYSIS & 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:

According to the Criminal Justice Estimating Conference, the economic impact of this bill is indeterminate. The committee substitute removes a defense in criminal cases and may have a slight economic impact.

V CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A APPLICABILITY OF THE MANDATES PROVISION

This bill is exempt from the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B REDUCTION OF REVENUE RAISING AUTHORITY

The committee substitute does not reduce anyone's revenue raising authority.

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

The committee substitute does not reduce the state tax shared with counties and municipalities.

VI. COMMENTS

Involuntary Intoxication

The segment of the committee substitute which provides that a defendant may submit evidence of his intoxication when the intoxication occurred as a result of the defendant taking a controlled substance prescribed by a practitioner is part of the involuntary intoxication defense which already exists in Florida. The principle behind this defense is that a person would not expect that they would become intoxicated by taking a substance which has been prescribed to them, if they take the substance according to the prescription. Brancaccio v. State, 698 So 2d 597 (Fla. 4th DCA 1997). The defense does not just apply to a defendant who becomes intoxicated after taking his or her prescription. For example, in Carter v. State, 710 So 2d 110 (Fla 4th DCA 1998), the defendant claimed that his friend gave him what he thought were four ibuprofen tablets. The defendant's friend testified that she inadvertently gave the defendant some of her lawfully prescribed psychiatric medicine. The Fourth District reversed the conviction, ruling that the defendant should have received an involuntary intoxication jury instruction.

Committee Amendments

On March 3, 1999, the Committee on Crime and Punishment met and Representative Lacasa offered two amendments to the bill. The first amendment clarifies that in order for a defendant to use the defense of voluntary intoxication when the consumption of the controlled substance was pursuant to a prescription, the prescription had to have been issued to the defendant and not to another person.

The second amendment removed reference to the bill as creating section 90.959 of Florida Statute. This was offered in order that the new statute be placed somewhere other than in chapter 90, which is the evidence code.

A third amendment, relating to hiring, leasing or obtaining personal property with the intent to deprive, offered by Representatives Crist and Hart, was withdrawn.

The Crime and Punishment Committee adopted the remaining two amendments and the bill, with its amendments was made a committee substitute for HB 421 and HB 485.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VIII. SIGNATURES

COMMITTEE ON CRIME AND PUNISHMENT

Prepared by:

Staff Director

Trina Kramer

J. Willis Renuart

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Jo Ann Levin

Don Rubottom

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME AND PUNISHMENT

Prepared by

Staff Director

Trina Kramer

J. Willis Renuart

By Representative Hart

1 A bill to be entitled
2 An act relating to criminal law; creating s.
3 90.4051, F.S.; prohibiting consideration of
4 evidence of a defendant's voluntary
5 intoxication to determine the existence of a
6 mental state that is an element of a crime;
7 creating s. 775.0852, F.S.; requiring that an
8 enhanced penalty be imposed if the victim of a
9 felony is related by lineal consanguinity to
10 the defendant or is the defendant's legal
11 guardian; providing an effective date.

12
13 WHEREAS, in *Montana v. Egelhoff*, 116 S.Ct. 2013 (1996),
14 the United States Supreme Court held that the Due Process
15 Clause of the Fourteenth Amendment was not violated by a
16 Montana law barring a jury in a criminal proceeding from
17 considering evidence of a defendant's voluntary intoxication
18 in determining the existence of a mental state that is an
19 element of a crime, and

20 WHEREAS, the court stated that a prohibition on such
21 evidence: accords with studies indicating that as many as half
22 of all homicides are committed by intoxicated offenders and
23 suggesting that drunks behave in accord with learned beliefs
24 that drunks are violent; deters drunkenness or irresponsible
25 behavior while drunk; ensures that persons incapable of
26 controlling violent impulses while intoxicated will go to
27 prison; and comports with and implements society's moral
28 perception that those who are voluntarily impaired shall be
29 responsible for the consequences of their impairment, and

30 WHEREAS, the Legislature finds that a prohibition on
31 such evidence advances the public interest in holding a

1 defendant accountable for his or her criminal behavior, while
2 also comporting with the defendant's right to due process of
3 law, and

4 WHEREAS, it is the intent of the Legislature to
5 prohibit a jury from considering evidence of a defendant's
6 voluntary intoxicated condition in determining whether he or
7 she possesses the requisite mental state to commit the crime
8 for which he or she is charged, NOW, THEREFORE,

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 90.4051, Florida Statutes, is
13 created to read:

14 90.4051 Responsibility; intoxication.--

15 (1) Notwithstanding s. 90.803 or any other law, a
16 person who is voluntarily in an intoxicated condition is
17 criminally responsible for his conduct. Voluntary intoxication
18 is not a defense to any offense and may not be taken into
19 consideration in determining the existence of a mental state
20 that is an element of the offense. If the defendant, outside
21 the presence of the jury, proves to the court by a
22 preponderance of the evidence that he or she did not know that
23 a substance was an intoxicating substance when he or she
24 consumed, smoked, inhaled, injected, or otherwise ingested the
25 intoxicating substance, the court may allow the evidence to be
26 submitted to the jury or considered by the court.

27 (2) As used in this section, the term "intoxicating
28 substance" means a substance capable of producing
29 intoxication, and the term "intoxication" means a disturbance
30 of physical or mental capacities resulting from the
31 introduction of a substance into the body.

1 Section 2. Section 775.0852, Florida Statutes, is
2 created to read:
3 775.0852 Felony committed against a family member;
4 enhanced penalties.--The penalty for any felony shall be
5 reclassified as provided in this section if the victim of the
6 felony is related by lineal consanguinity to the defendant or
7 if the victim is the defendant's legal guardian.
8 (1) A felony of the third degree shall be punishable
9 as if it were a felony of the second degree.
10 (2) A felony of the second degree shall be punishable
11 as if it were a felony of the first degree.
12 (3) A felony of the first degree shall be punishable
13 as if it were a life felony.

14 Section 3. This act shall take effect July 1, 1999.

16 *****

17 SENATE SUMMARY

18 Provides that voluntary intoxication is not a defense to
19 any criminal charge and may not be taken into
20 consideration in determining the existence of a mental
21 state that is an element of the offense. Provides for a
22 showing and introduction of evidence that the accused was
23 unaware, at the time of its ingestion, that a substance
24 is intoxicating. Provides for the penalty imposed for a
25 felony offense to be enhanced by one degree if the victim
26 of the felony is related by lineal consanguinity to the
27 defendant or if the victim is the defendant's legal
28 guardian.
29
30
31

STORAGE NAME: h0485.cp
DATE March 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL # HB 485
RELATING TO: Criminal Law
SPONSOR(S) Representative Hart
COMPANION BILL(S): S54(I)

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

- (1) CRIME AND PUNISHMENT
 - (2) JUDICIARY
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I SUMMARY

The bill creates section 90 4051 which provides that voluntary intoxication is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state that is an element of an offense. The bill also provides that if the defendant proves to the trial court by a preponderance of the evidence that he or she did not know that a substance was an intoxicating substance when he ingested the substance, the trial court may allow the evidence to be submitted to the jury.

Creates enhanced penalties if the victim of a felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian.

A very similar bill, HB 421, also provides for the elimination of the voluntary intoxication defense.

II. SUBSTANTIVE ANALYSIS

A. PRESENT SITUATION:

Voluntary intoxication is recognized in Florida as a defense to a specific intent crime Frey v. State, 708 So 2d 918 (Fla 1998) Specific intent is an intent "to accomplish the precise act which the law prohibits." Id Voluntary intoxication is a defense to a crime when a certain mental state is an essential element of a crime, and a person was so intoxicated that he or she was incapable of forming that mental state. Florida Standard Jury Instruction 3.04(g) Voluntary intoxication is not a statutory defense but has developed through case law.

The burden is on a defendant to come forward with evidence that he was intoxicated at the time of the offense If a defendant submits any evidence that the defendant was intoxicated at the time of the offense, the jury must be given a voluntary intoxication instruction. Leschka v State, 695 So 2d 535 (Fla 2nd DCA 1997) "Evidence of alcohol consumption prior to the commission of the crime does not, by itself, mandate the giving of a jury instruction with regard to voluntary intoxication" Watkins v State, 519 So.2d 760,(Fla. 1st DCA 1988) However, if a defendant comes forward with evidence that he was intoxicated at the time of the offense and the trial court refuses to read the voluntary intoxication instruction to the jury, the case is often reversed on appeal. For example, in Leschka, the defendant and the victim testified to the use of intoxicants and evidence was submitted to the jury which indicated that the defendant was intoxicated The trial court allowed the defense to argue voluntary intoxication to the jury but would not instruct the jury on the defense. The Second District reversed the conviction finding that "the amount of evidence of intoxication presented crossed the threshold of legal sufficiency so that the appellant should have had the jury instructed on his defense of voluntary intoxication " Leschka, 695 So 2d at 536.

In recent concurring opinions in a Florida Supreme Court case, Justice Harding and Justice Grimes recommended that either the Court or legislature consider abolishing the voluntary intoxication defense Frey v State, 708 So 2d 918 (Fla 1998) These justices also noted the difficulty in determining whether a crime is a specific or a general intent crime and therefore whether the voluntary intoxication defense applies See also Carter v State, 710 So 2d 110 (Fla 4th DCA 1998)(noting that "the distinction between specific and general intent crimes is not an easy one."). For example, first degree murder, robbery, kidnapping, aggravated assault and battery are specific intent crimes while arson, second-degree murder, false imprisonment and resisting a police officer with violence are general intent crimes. Frye

B. EFFECT OF PROPOSED CHANGES

Section 1 of the bill provides that voluntary intoxication is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense. The bill also provides that if the defendant, outside the presence of the jury, proves to the trial court by a preponderance of the evidence that he or she did not know that the substance he or she consumed was an intoxicating substance, the court may allow the evidence to be submitted to the jury

The bill defines the term "intoxicating substance" as a substance "capable of producing intoxication" and defines the term "intoxication" as "a disturbance of physical or mental capacities resulting from the introduction of a substance into the body "

Section 2 of the bill provides for the reclassification of a felony if the victim of the felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian The reclassification would be as follows.

- 1 A felony of the third degree shall be punishable as if it were a felony of the second degree
- 2 A felony of the second degree shall be punishable as if it were a felony of the first degree
- 3 A felony of the first degree shall be punishable as if it were a life felony.

Lineal consanguinity is defined in Black's Law Dictionary as follows

That kind of consanguinity which subsists between person of whom one is descended in a direct line from the other, as between a particular person and his father, grandfather, great-grandfather, and so upward, in the direct ascending line, or between the same person and his son, grandson, great-grandson, and so downwards in the direct descending line

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?

No.

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

No

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

No.

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?

No.

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

No

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

No

- d Does the bill reduce total fees, both rates and revenues?
No
 - e Does the bill authorize any fee or tax increase by any local government?
No.
3. Personal Responsibility
- a Does the bill reduce or eliminate an entitlement to government services or subsidy?
No
 - b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
No
- 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?
No
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?

No

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 sections 90 4051 and 775 0852

E. SECTION-BY-SECTION ANALYSIS

Section 1. Creates section 90 4051 which provides that voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of an offense

Section 2: Provides for enhanced penalties if the victim of a felony is related by lineal consanguinity to the defendant or if the victim is the defendant's legal guardian

Section 3: Provides for effective date of July 1, 1999

III. FISCAL ANALYSIS & 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:

The Criminal Justice Estimating Conference has not met to consider whether the provision enhancing penalties for crimes committed against victims related by lineal consanguinity to the defendant will increase costs to the Department of Corrections

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

A APPLICABILITY OF THE MANDATES PROVISION

Because the bill is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution

B REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES.

The bill does not reduce the state tax shared with counties and municipalities

V COMMENTS.

The segment of the bill that provides that a defendant who proves to the trial court that he or she did not know that a substance was an intoxicating substance when he or she consumed the substance may have the evidence considered by the jury is similar to the involuntary intoxication defense which already exists in Florida. For example, in Carter v State, 710 So 2d 110 (Fla 4th DCA 1998), the defendant claimed that his friend gave him what he thought were four ibuprofen tablets. The defendant's friend testified that she inadvertently gave the defendant some of her lawfully prescribed psychiatric medicine. The Fourth District reversed the conviction, ruling that the defendant should have received an involuntary intoxication instruction. However, this bill provides that in order to use this

defense, the defendant must prove to the trial court outside of the presence of the jury that he or she did not know the substance was intoxicating by a preponderance of the evidence. This is different from the general rule which provides that "[w]here there is any evidence introduced at trial which supports the theory of the defense, a defendant is entitled to have the jury instructed on the law applicable to his theory of defense when he so requests." Arthur v. State, 717 So.2d 193, 23 Fla. L. Weekly D2162, (Fla 5th DCA 1998)

This bill eliminates the voluntary intoxication defense and creates enhanced penalties for felonies in which the victim is related by lineal consanguinity to the defendant. Combining this provision and the provision eliminating voluntary intoxication may violate the single subject requirement of Article III, Section 6 of the Florida Constitution

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

None

VII SIGNATURES

COMMITTEE ON CRIME AND PUNISHMENT
Prepared by:

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**GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
SIXTEENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968**

**During the Regular Session
March 2, 1999, through April 30, 1999**



**Volume I, Part One
Published by Authority of Law
Under Direction of the
OFFICE OF LEGISLATIVE SERVICES
Tallahassee**

1999

made under this section to the governing body of the county for which the housing finance authority was created.

(a) Except as provided in paragraphs (b) and (c), with respect to allocation granted prior to July 1, a housing finance authority located in region 1, 2, 3, 4, 5, 6, 7, 8, ~~or 9~~, or 17 may make the election only in an amount not greater than the amount that bears the same ratio to its region's initial allocation as the population of its county bears to the population of its region, based on population figures provided by the division.

Section 3. This act shall take effect upon becoming a law

Approved by the Governor May 14, 1999

Filed in Office Secretary of State May 14, 1999.

CHAPTER 99-174

Committee Substitute for House Bill Nos. 421 and 485

An act relating to evidence; providing that evidence of voluntary intoxication is not admissible for certain purposes; providing an exception; providing an effective date

Be It Enacted by the Legislature of the State of Florida:

Section 1. Voluntary intoxication; not a defense; evidence not admissible for certain purposes; exception.—Voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substance as described in chapter 893, Florida Statutes, is not a defense to any offense proscribed by law. Evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense, except when the consumption, injection, or use of a controlled substance under chapter 893, Florida Statutes, was pursuant to a lawful prescription issued to the defendant by a practitioner as defined in s. 893.02, Florida Statutes.

Section 2. This act shall take effect October 1, 1999.

Approved by the Governor May 14, 1999.

Filed in Office Secretary of State May 14, 1999.