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 *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 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.