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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 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.

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:

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