

STORAGE NAME: h0435a.jud

DATE: April 16, 1999

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

BILL #: HB 435

RELATING TO: Accessories After the Fact

SPONSOR(S): Representative Kelly

COMPANION BILL(S): none

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

- (1) CRIME AND PUNISHMENT YEAS 5 NAYS 0
- (2) JUDICIARY YEAS 9 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill removes the requirement that the state prove that a person charged with accessory after the fact was not related to the person who committed the felony by blood or marriage as husband, wife, parent, grandparent, child, grandchild, brother or sister. Therefore, the bill allows a family member of a person who committed a felony to be charged with accessory after the fact if the family member aided the offender with the intent that the offender avoid arrest or punishment.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In Florida there is not a crime of "harboring a fugitive" but one is guilty of being accessory after the fact in violation of section 777.03, F.S., if he or she maintains or assists a felon to whom he or she is not related or gives him any other aid with intent that he should avoid or escape detection, arrest, trial, or punishment. *Roberts v. State*, 318 So.2d 166 (2nd DCA 1975).

There are three elements the state must prove in order to convict a person of accessory after the fact:

1. The person charged with accessory after the fact must have *knowledge* that another person committed a felony. (The state must prove that the other person actually committed the felony.)
2. The person charged with accessory *aided or maintained* the felony offender with the intent that the felony offender escape arrest or punishment for the crime.
3. *Absence of the statutory familial relationship* between the person charged with accessory after the fact and the person who committed the felony.¹

Section 777.03, F.S., provides that the charge of accessory after the fact does not apply to any person "standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender." The standard jury instructions promulgated by the Florida Supreme Court has interpreted this exception for close relatives as a requirement for the prosecution to prove the following:

The person charged with accessory after the fact was not related to the person who committed the felony by blood or marriage as husband, wife, parent, grandparent, child grandchild, brother or sister.

Accessory after the fact is punishable as an offense that is one degree less than the crime committed by the person who was being aided, except that if the felony offense committed is a third degree felony then the offense of accessory after the fact is a third degree felony. However, accessory after the fact involving a third degree felony offenses ranked as a level one or two in the offense severity chart for the punishment code is a misdemeanor of the first degree.

B. EFFECT OF PROPOSED CHANGES:

The bill removes the requirement that the state prove that a person charged with accessory after the fact was not related to the person who committed the felony by blood or marriage as husband, wife, parent, grandparent, child, grandchild, brother or sister. Therefore, the bill allows a family member of a person who committed a felony to be charged with accessory after the fact if the family member aided the offender with the intent that the offender avoid arrest or punishment.

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.

¹ Carrillo v. State, 463 So.2d 450 (2nd DCA 1985).

(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?

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?

The bill prohibits the relatives of persons who have committed a felony from aiding the felon with the intent that the felony offender avoid arrest or punishment.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
Yes, currently relatives may harbor felons.

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:

Section 777.03, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Removes exception for relatives from the offense of accessory after the fact.

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

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

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

See Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet met to determine the fiscal impact of the bill. In Fiscal Year 1997-98 14 persons were admitted into prison for committing accessory after the fact, and another 72 persons were admitted to Department of Corrections supervision. It should be expected that family members would be more likely to commit accessory after the fact than non-family members, therefore the bill will have some at least minimal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

Judiciary Committee staff comments:

The change will expose parents of children who live at home to the crime of accessory after the fact. Without the exercise of sufficient prosecutorial discretion, many parents who are already distressed from the actions of their children may now be exposed to prosecution themselves. In addition, the existence of the husband - wife evidentiary privilege may make charges of accessory after the fact more difficult to prove between husband and wife than between other family members.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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