**STORAGE NAME**: h1045a.cp
**DATE**: March 8, 2000

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

**BILL #**: HB 1045

**RELATING TO**: Criminal Defense of Insanity

**SPONSOR(S)**: Representative Bilirakis

**TIED BILL(S)**: None

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

(1) CRIME AND PUNISHMENT YEAS 4 NAYS 1
(2) CRIMINAL JUSTICE APPROPRIATIONS
(3)
(4)
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I. SUMMARY:

HB 1045 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.

HB 1045 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.

HB 1045 provides that a “mental infirmity, disease or defect” does not include disorders that result from voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders, or irresistible impulse.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

| | | | | |
|---|---|---|---|---|
| 1. | Less Government | Yes [] | No [] | N/A [X] |
| 2. | Lower Taxes | Yes [] | No [] | N/A [X] |
| 3. | Individual Freedom | Yes [] | No [] | N/A [X] |
| 4. | Personal Responsibility | Yes [] | No [] | N/A [X] |
| 5. | Family Empowerment | Yes [] | No [] | N/A [X] |

For any principle that received a "no" above, please explain:

B. 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 820 (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 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 must 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.

C. EFFECT OF PROPOSED CHANGES:

HB 1045 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.

HB 1045 further provides that the element of insanity requiring proof of a mental infirmity, disease or defect is not satisfied by disorders that result from "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.

HB 1045 also places the burden on a defendant to prove the defense of insanity by clear and convincing evidence.

D. 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 GOVERNMENT:

1. Revenues:

*See* Fiscal Comments.

2. Expenditures:

*See* Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

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

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

HB 1045 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. ) 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 1045 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:

The Committee on Crime and Punishment passed an amendment which deleted the word "acute" from the description of voluntary intoxication which is excluded as a disorder to qualify as a mental infirmity, disease or defect for purposes of asserting an insanity defense.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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