

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1430

INTRODUCER: Senators Taddeo and Book

SUBJECT: Plea Agreements in Cases Involving Child Deaths

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1430 requires state attorneys to provide the court with a written statement of the reasons for a plea agreement under conditions where a state attorney has made a plea agreement with a defendant:

- In a case where a child victim has died as a result of the offense; and
- The plea offer is for an offense that is of a lesser statutory degree or subjects the defendant to lesser penalties.

The bill is effective October 1, 2018.

II. Present Situation:

Plea agreements are an essential component of the administration of justice.¹ The prosecuting attorney and the defense attorney, or the defendant representing himself or herself, are encouraged to discuss and agree on pleas for a case. These agreements can occur at any time during the pendency of a criminal case.² A plea agreement is essentially a contract between the prosecution and the defense, and contract law applies.³

The terms of a plea agreement may include, but not necessarily be limited to:

- The charges a prosecutor will drop⁴ or reduce in exchange for the defendant's plea; and

¹ *Santobello v. New York*, 404 U.S. 257, 260 (1971).

² Rule 3.171(a), Fla. R. Crim. Pro.

³ *Garcia v. State*, 722 So.2d 905, 907 (Fla. 3d DCA 1998).

⁴ The legal term used for "dropping" any number of charges or all charges in a case is *nolle prosequi*, meaning an entry on the record of a legal action denoting that the prosecutor will proceed no further in an action either as a whole or as to some count (charge) or as to one or more of several defendants. Merriam-Webster Law Dictionary, available at <https://www.merriam-webster.com/dictionary/nolle%20prosequi>, (last visited January 24, 2018).

- An agreed-upon sentencing recommendation to the court, or, alternatively, an agreement to not make a sentencing recommendation at all, or that the prosecutor will not oppose a defendant's request for a particular sentence.⁵

It is only after a defendant has waived his right to a jury trial and knowingly, freely, and voluntarily entered a plea thereby exposing him or herself to a potential loss of liberty, that the agreement may have an effect.⁶

Many considerations enter into decisions surrounding the plea bargain and agreement process for both the defendant and the prosecution. As a practical matter, both parties should assess the overall strength of the prosecution's evidence in the case, because the prosecution not the defense, has the burden of proof. Also, there can be times when the defense may be expected to present evidence tending to create a reasonable doubt, and that potential evidence should be assessed.

For example, the prosecution and the defense will likely consider:

- The availability⁷ and credibility⁸ of the witnesses;
- Whether the case is strictly circumstantial⁹ or if there is eyewitness testimony; and
- The sentence the defendant may face should he or she be convicted of the charges as filed by the prosecutor.

A court is not bound by a plea agreement entered into by the parties.¹⁰ There is a clear demarcation of roles, or a tension between the parties and the court. This tension is based upon the separation of powers¹¹ of the judicial and the executive branches of government and the differing responsibilities of each within the process.¹²

III. Effect of Proposed Changes:

The bill creates s. 921.144, F.S. The bill requires that a state attorney must provide the court with a written statement of the reasons justifying a plea agreement if:

- The agreement with the defendant is made in a case where a child was the victim who died as the result of the offense; and

⁵ Rule 3.171(b), Fla. R. Crim. Pro.

⁶ *Mabry v. Johnson*, 467 U.S. 504, 507-508 (1984). See also *State v. Vixamar*, 687 So.2d 300, 301 (Fla. 4th DCA 1997).

⁷ See *Baby Chance's mother death could derail trial*, NBC-2 WBBH News, September 11, 2016, available at <http://www.nbc-2.com/story/33063585/baby-chances-mother-death-could-derail-trial> (last visited January 21, 2018); *Bradenton mom accused of killing daughter, putting body in freezer accepts plea deal*, WFLA News Channel 8, August 9, 2017, available at <http://wfla.com/2017/08/09/plea-deal-today-for-bradenton-mom-accused-of-killing-daughter-putting-body-in-freezer/> (last visited January 21, 2018).

⁸ See *Plea Deal Negotiated in Levy Child Death Case*, WGLF My CBS4.com (January 24, 2014) available at <http://mycbs4.com/archive/plea-deal-negotiated-in-child-death-case> (last visited January 22, 2018).

⁹ *Id.*

¹⁰ Rule 3.171(g) and (h), Fla. R. Crim. Pro.

¹¹ Article II, s. 7, FLA. CONST.

¹² “[T]here is considerable authority for the proposition that prosecutorial discretion is itself an incident of the constitutional separation of powers, and that as a result the courts are not to interfere with the free exercise of the discretionary powers of the prosecutor in his control over criminal prosecutions.” (footnote omitted); *State v. Cain*, 381 So.2d 1361, 1367 n. 8 (Fla.1980). See also *United States v. Cox*, 342 F.2d 167, 171 (5th Cir.1965); *Barnett v. Antonacci*, 122 So.3d 400, 405 (Fla. 4th DCA 2013).

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IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 921.144 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
