

STORAGE NAME: h3285.cp

DATE: February 2, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3285

RELATING TO: Adjudication Of Guilt

SPONSOR(S): Rep.'s Clemmons, Heyman, Crow, and others.

COMPANION BILL(S): None.

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

- (1) CRIME AND PUNISHMENT
- (2) CIVIL JUSTICE AND CLAIMS
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill creates Section 775.0844, F.S., which prohibits judges from withholding adjudication of guilt for repeat felony offenders.

The bill repeals Rule 3.670, Florida Rules of Criminal Procedure, to the extent that it permits judges to withhold adjudication of guilt. (This requires a two-thirds vote of the legislature.)

The newly created Section 775.0844, F.S., will become effective without regard to whether Rule 3.670 of the Florida Rules of Criminal Procedure, is repealed by the necessary two-thirds vote of the legislature.

The effective date is "July 1 of the year in which enacted."

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Adjudications Of Guilt

Adjudication of guilt may not be withheld when the offender is sentenced to prison. Rule 3.670 of the Florida Rules of Criminal Procedures provides:

If the defendant is found guilty, a judgement of guilty and, if the defendant has been acquitted, a judgement of not guilty shall be rendered in open court and in writing, signed by the judge, filed, and recorded. However, **the judge may withhold an adjudication of guilt if the judge places the defendant on probation.**

Withholding adjudication of guilt even though a person is found guilty has only three practical effects:

- ▶ First, the offender may truthfully represent to a prospective employer, or any other interested party, that he has no criminal record (as it relates to that crime).
- ▶ Secondly, if adjudication of guilt has been withheld, an offender may apply to have his record expunged. See, Rule 3.989, Florida Rules of Criminal Procedure. This means that if the offender has no other convictions (including those for which adjudication may have been withheld), then he may be eligible to have his conviction erased from the record, as if it never occurred.
- ▶ The third effect of withholding adjudication on a conviction is that the crime may not be used to impeach the offender's credibility when testifying at trial. See, Barber v. State, 413 So. 2d 482 (Fla. 2nd DCA 1982). Hence, in his trial for a subsequent offense, the offender may tell the jury he is innocent of the new offense and may not be impeached with evidence of his prior crime.

For all other purposes, a conviction in which adjudication is withheld is treated no differently than a conviction with adjudication of guilt. For example, a "withhold" will still be used against an offender as a "prior record" when sentencing a defendant for subsequent crimes. See, Canion v. State, 661 So. 2d 931 (Fla. 4th DCA 1995) ("adjudication withheld" constituted conviction and could later be used to increase sentencing guidelines score of defendant should future offenses occur) ; Ryals v. State, 516 So. 2d 1092 (Fla. 5th DCA 1987); Rule 3.701(d)(2), Florida Rules of Criminal Procedure (defining "conviction" as a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld).

B. EFFECT OF PROPOSED CHANGES:

The bill creates Section 775.0844, F.S., which prohibits judges from withholding adjudication of guilt for repeat felony offenders. This means that every offender who has a previous felony conviction, regardless of whether adjudication of guilt was withheld in that conviction, must be adjudicated guilty of the new offense. Convictions from other jurisdictions also qualify as a prior offense under this section so long as they are "substantially similar in elements and penalties to an offense in this state"

Also, the bill repeals Rule 3.670, Florida Rules of Criminal Procedure, to the extent that it permits judges to withhold adjudication. The repeal of any rule of the court requires a two-thirds vote by the legislature.

The effective date is "July 1 of the year in which enacted" except that Section 775.0844, F.S., will become effective without regard to whether Rule 3.670 of the Florida Rules of Criminal Procedure, is repealed by the necessary two-thirds vote of the legislature.

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?

No.

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:

Section 775.0844

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates statute to prohibit judges from withholding adjudication of guilty for repeat offenders.

Section 2: Repeals Rule 3.670 of the Florida Rules of Criminal Procedure upon a two-thirds vote of the legislature.

Section 3: Provides for Section 775.0844, F.S., to be created on July 1 of the year enacted, regardless of whether Rule 3.670 is repealed by two-thirds vote of the legislature.

III. FISCAL RESEARCH & 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 bill does not create a new offense, nor does it increase the penalties for an existing offense. At the publishing of this report, the Criminal Justice Estimating Conference has not met to consider the bill, but has offered a tentative estimate that it will have no fiscal impact.

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 requirements of Article VII, Section 18.

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.

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V. COMMENTS:

The bill limits a court's discretion to be lenient to repeat offenders. The bill does not prevent judges from withholding adjudication from first-time offenders as provided in Rule 3.670, Florida Rules of Criminal Procedures. Moreover, a first-time felony offender who is sentenced for two felony counts at one time, also, may have adjudication withheld.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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