

**STORAGE NAME:** h1903a.cp

**DATE:** April 5, 1999

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

**BILL #:** HB 1903

**RELATING TO:** Criminal Appeals and Collateral Review

**SPONSOR(S):** Representative Garcia and Representative Cantens

**COMPANION BILL(S):** SB 1926(I)

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
  - (2) JUDICIARY
  - (3) CRIMINAL JUSTICE APPROPRIATIONS
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 1903 makes several changes to Chapter 924 relating to appeals in criminal and postconviction cases including the following:

- The bill changes Florida case law which states that in order to support a conviction that is based solely on circumstantial evidence, the evidence must exclude every reasonable hypothesis of innocence. The bill codifies the Federal standard by providing that an appellate court may not reverse a judgment of conviction on the ground of insufficiency of the evidence unless a rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt.
- The bill provides that a judgment in a capital case may not be reversed unless the Supreme Court is of the opinion, after an examination of the appellate record, that error was committed which so injuriously affected the substantial rights of the defendant that the error is not harmless. The bill also provides that the Supreme Court is not permitted to presume that an error at trial injuriously affected the substantial rights of the defendant.
- The provides that a successive motion for postconviction relief in a capital case may not be considered by a trial court unless the facts underlying the claim, if proven are sufficient to establish by clear and convincing evidence that, but for the constitutional error, a reasonable fact finder would not have found the defendant guilty of the underlying offense.
- The bill provides that a postconviction proceeding may not be stayed upon a claim that the defendant is incompetent or insane unless the stay is issued by the Governor after an execution date has been set.
- The bill provides that upon request by the State, a postconviction defendant must provide the State copies of all documents which are to be introduced into evidence and names and addresses of witnesses which will testify at the evidentiary hearing.
- The bill provides that a trial court judgment in a criminal case is final until overturned on appeal or collateral review. The bill will overruled caselaw which provides that a conviction which is being appealed cannot be used as a prior offense for the purposes of habitualizing a defendant.
- The bill provides that in order to be considered "properly filed", a postconviction motion in a capital case must be accompanied by sworn affidavits substantiating any factual allegations therein, and is not subject to amendment.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Circumstantial and Direct Evidence**

Evidence is divided into two types - circumstantial and direct. "Direct evidence is that to which the witness testifies of his own knowledge as to the facts at issue." Orme v. State, 677 So.2d 258 (Fla. 1996). Circumstantial evidence is "testimony not based on actual personal knowledge or observation of the facts in controversy, but on other facts from which deductions are drawn, showing indirectly the facts sought to be proved." Black's Law Dictionary. For example, an eyewitness to a crime would provide direct evidence while a fingerprint or DNA evidence left at the scene of the crime would be circumstantial evidence. Mutcherson v. State, 696 So.2d 420 (Fla. 2d DCA 1997).

**Sufficiency of the Evidence**

At trial, when the State has finished presenting its evidence, a defense counsel usually makes a "motion for judgment of acquittal" where the counsel claims that the State failed to prove every element of the charged offenses. In determining whether to grant the motion for judgment of acquittal, the following standard applies:

A defendant in moving for a judgment of acquittal, admits not only the facts stated in the evidence adduced, but also admits every conclusion favorable to the adverse party that a jury might fairly and reasonably infer from the evidence. The courts should not grant a motion for judgment of acquittal unless the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law.

Lynch v. State, 293 So.2d 44, 45 (Fla.1974).

When a defendant argues on appeal that the trial court erred in denying his or her motion for judgment of acquittal:

an appellate court should not retry a case or reweigh conflicting evidence submitted to a jury or other trier of fact. Rather, the concern on appeal must be whether, after all conflicts in the evidence and all reasonable inferences therefrom have been resolved in favor of the verdict on appeal, there is substantial, competent evidence to support the verdict and judgment.

Tibbs v. State, 397 So.2d 1120 (Fla. 1981), aff'd, 457 U.S. 32, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982).

A conviction may be based solely on circumstantial evidence. However, when a case is based solely on circumstantial evidence, a special standard of review of the sufficiency of the evidence applies. State v. Law, 559 So.2d 187 (Fla. 1989).

To overcome a defendant's motion for judgment of acquittal in a case based entirely on circumstantial evidence, the state has the burden of presenting evidence from which the jury can exclude every reasonable hypothesis except that of guilt. Atwater v. State, 626 So.2d 1325, 1328 (Fla.1993), cert. denied, > --- U.S. ----, 114 S.Ct. 1578, 128 L.Ed.2d 221; State v. Law, 559 So.2d 187, 189 (Fla.1989). However, [t]he State is not required to conclusively rebut every possible variation of events which can be inferred from the evidence but only to introduce competent evidence which is inconsistent with the defendant's theory of events. State v. Law, 559 So.2d 187, 189 (Fla.1989). Once this threshold burden has been met, the question of whether the evidence is sufficient to exclude all reasonable hypotheses of innocence is for the jury to determine.

State v. Powell, 636 So.2d 138, 142 (Fla. 1st DCA 1994)(citations omitted).

The test in reviewing the trial court's ruling on the motion....is not whether, in the opinion of the trial court or appellate court, the evidence fails to exclude every reasonable hypothesis but that of

guilt but, rather, whether the jury might reasonably so conclude. If there is competent evidence from which the jury could reasonably exclude every hypothesis except that of [guilt], the verdict will not be reversed. That view of the evidence must be taken in the light most favorable to the state.

Id.

There is no special circumstantial evidence rule in the federal courts. In Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), the United States Supreme Court held that the relevant question for a court reviewing the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

### **Harmless Error**

An appellate court does not reverse a case every time that it makes a determination that an error occurred at trial. Instead, the appellate court determines whether the error was “harmless” and the conviction can be affirmed.

Section 921.033 provides:

No judgment shall be reversed unless the appellate court is of the opinion, after an examination of all the appeal papers, that error was committed that injuriously affected the substantial rights of the appellant. It shall not be presumed that error injuriously affected the substantial rights of the appellant.

In 1996, the legislature passed the “Criminal Appeals Reform Act” which became part of Chapter 924 of the Florida Statutes. The purpose of the bill was to establish certain terms and conditions that must be met before taking direct and collateral appeals. The Criminal Appeals Reform Act created the following sections which deal with the concept of harmless error:

- “Prejudicial error” means an error in the trial court that harmfully affected the judgment and sentence. s. 924.051(1)(a), F.S.
- A judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred. s. 924.051(3), F.S.
- In a direct appeal or a collateral proceeding, the party challenging the judgment or order of the trial court has the burden of demonstrating that a prejudicial error occurred in the trial court. A conviction or sentence may not be reversed absent an express finding that a prejudicial error occurred in the trial court. s. 924.051(7).

In State v. DiGuilio, 491 So.2d 1129, (Fla. 1986), the Florida Supreme Court set forth the following test:

The harmless error test..... places the burden on the state, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction.

“Constitutional error” is error which infringes on a defendant’s constitutional rights, e.g., an improper comment to the jury on a defendant’s right to remain silent. On the other hand, trial error is error that does not implicate a defendant’s constitutional rights, e.g., an erroneous ruling on an evidentiary matter. Although the error involved in DiGuilio was constitutional in nature, courts have often applied the DiGuilio standard to cases in which the asserted error was not of a constitutional nature and have thus required the state to prove beyond a reasonable doubt that the error did not contribute to the jury’s verdict.

After the passage of the Criminal Appeals Reform Act, several District Courts of Appeal have held that this statute places the burden on the defendant to prove that non-constitutional error has affected the jury’s verdict. Goodwin v. State, 721 So.2d 728 (Fla. 4th DCA 1998). The Florida Supreme Court

has agreed to decide the question of whether the Criminal Appeal's Reform Act has abrogated the harmless error analysis in DiGuilio for appeals which do not involve constitutional error.

### **Overview of Postconviction Proceedings in Capital Cases**

A defendant who is convicted of a crime in which the death penalty is imposed receives a direct appeal of his or her sentence and conviction to the Florida Supreme Court. Art. V, Section 3(b)(1). If the Florida Supreme Court affirms the capital defendant's conviction and sentence, a defendant can appeal that decision to the United States Supreme Court by filing a petition for writ of certiorari. If the Supreme Court refuses to hear the defendant's appeal, a defendant is entitled to begin state postconviction proceedings.

State postconviction proceedings are controlled by Florida Rules of Criminal Procedure 3.850 and 3.851. Postconviction proceedings, also known as collateral review, usually involves claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence or claims that the prosecution failed to disclose exculpatory evidence. A rule 3.850 or 3.851 motion is filed in the trial court where the defendant was tried and sentenced. Often, the trial court conducts an evidentiary hearing on the defendant's claims. If the trial court denies the motion for postconviction relief, the defendant then is entitled to an appeal of this denial to the Florida Supreme Court.

### **Time Limitations on Postconviction Motions**

1. **Rule 3.851:** Florida Rule of Criminal Procedure 3.851 provides that a rule 3.850 motion in a capital case must be filed within one year after the judgment and sentence become final. A judgment is final: 1) upon expiration of the time permitted to file a petition for writ of certiorari in the United States Supreme Court seeking review of the decision of the Supreme Court of Florida affirming a judgment and sentence of death (90 days after the opinion becomes final) or 2) upon the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.

**Amending Pleadings:** The rule further provides that the time limitation shall not preclude the right to amend or to supplement pending pleadings pursuant to these rules.

**Extension of Time:** The rule also provides that an extension of time may be granted by the Florida Supreme Court for the filing of postconviction proceedings if the prisoner's counsel makes a showing of good cause for counsel's inability to file the postconviction pleadings within the one year period.

2. **Statutory Provisions:** Section 924.051(7)(b) provides that in a case in which the death sentence has been imposed, a motion for collateral relief may not be considered if the motion is filed more than one year after the judgment and sentence become final, unless:
  - a. The facts upon which the claim is predicated were unknown to the petitioner or his or her attorney and could not have been ascertained by the exercise of due diligence or
  - b. The fundamental constitutional right asserted was not established within the period provided for in this subsection and has been held to apply retroactively.

Section 924.055 provides the following time limitations in capital postconviction cases:

- a. Within 1 year after the date the Florida Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for writ of certiorari, whichever is later, all postconviction motions and petitions that challenge the judgment, sentence, or appellate decision must be filed in the appropriate court.
- b. Within 90 days after the date the state files a response to a postconviction motion that challenges the judgment or sentence, the circuit shall conduct all necessary hearings and render a decision.
- c. Within 200 days after the date a notice is filed appealing an order of the trial court or an extraordinary writ is filed in a postconviction proceeding, the Supreme Court shall render a decision.

### **Successive Motions**

Florida Rule of Criminal Procedure 3.850(f) provides that a second or successive postconviction motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits, or if new and different grounds are alleged, the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the procedure governing the rules.

### **Contents of Postconviction Motions**

Florida Rule of Criminal Procedure 3.850(c) requires a postconviction motion to be under oath and include:

1. the judgment or sentence under attack and the court which entered the same;
2. whether there was an appeal from the judgment or sentence and the disposition thereof;
3. whether a previous postconviction motion has been filed, and if so, how many/
4. if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;
5. the nature of the relief sought; and
6. a brief statement of the facts (and other conditions) relied on in support of the motion.

### **Staying Postconviction Proceedings of Mentally Ill Defendant**

**Competency in Postconviction Proceedings:** In order to stand trial, a defendant must be "competent". In determining whether a defendant is competent to stand trial, the trial court must decide whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as a factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960); Florida Rule of Criminal Procedure 3.211(a)(1) . In Carter v. State, 706 So.2d 873 (Fla. 1997), the Florida Supreme Court overruled its own precedent and held that a trial court must hold a competency hearing in a postconviction proceeding where a capital defendant shows there are specific factual matters at issue that require the defendant to competently consult with counsel. If there are no factual disputes that require the defendant's participation, the defendant is not entitled to a competency hearing. Medina v. State, 690 So.2d 1241; Jackson v. State, 452 So.2d 533 (Fla. 1984).

For example, if a postconviction motion claims that the trial counsel was ineffective for failing to investigate a certain witness and the State agrees that the defense counsel did not investigate that witness but argues that despite this failure, the defense counsel was not ineffective, there would be no factual dispute which would require the defendant to assist his counsel or testify at an evidentiary hearing. The defendant would probably not be entitled to a hearing to determine his competency to testify. On the other hand, if the State claimed that the defense counsel did investigate the witness, there would be a factual dispute which would require the defendant's participation. The defendant would then be entitled to a competency hearing. If the defendant was found incompetent, the postconviction proceeding could not continue until the defendant was found to be competent.

**Competency to be Executed:** The United States Supreme Court has held that it is cruel and unusual punishment to execute a person who is insane. Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) .

Section 922.07 provides that when the Governor is informed that a person under sentence of death may be insane, the Governor shall stay execution of the sentence and appoint a commission of three psychiatrists to examine the convicted person. The psychiatrists are to determine whether the defendant understands the nature and effect of the death penalty and why it is to be imposed upon the defendant. After receiving the report of the psychiatrists, if the Governor decides that the convicted person has the mental capacity to understand the nature of the death penalty and the reasons why it was imposed upon him, the Governor shall immediately lift the stay and set a new

date for execution of the death sentence. If the Governor decides that the convicted person does not have the mental capacity to understand the nature of the death penalty and why it was imposed, the Governor shall have the convicted person committed to a Department of Corrections mental health treatment facility.

### **Discovery in Collateral Proceedings**

“Discovery” is a process used before trial where each party discloses facts to the other party to assist in preparation for trial. Among other things, the process includes disclosure of witness lists, production of documents and taking of depositions.

In State v. Lewis, 656 So.2d 1248, 1250 (Fla. 1994), the Florida Supreme Court held that although in most cases any grounds for postconviction relief will appear on the face of the record, upon a showing of good cause, a trial court may allow discovery before conducting a postconviction hearing. In deciding whether to allow this “limited” form of discovery, the trial court, “shall consider the issues presented, the elapsed time between the conviction and the post-conviction hearing, any burdens placed on the opposing party and witnesses, alternative means of securing the evidence, and any other relevant facts.”

### **Finality of Prior Convictions**

Before sentencing, the state attorney prepares a scoresheet to determine the appropriate sentence for the offender. The scoresheet not only includes scores for all offenses pending before the court for sentencing, but scores for any past criminal conduct on the part of the offender which resulted in a conviction prior to the commission of the primary offense. In order to sentence a defendant as a habitual offender, the State must prove that the defendant had been convicted of two previous felonies. At least one of the prior convictions must have been within the five years preceding the commission of the felony for which the defendant is being sentenced. s. 775.084, F.S.

The Florida Supreme Court has ruled that prior convictions can be used for the purpose of calculating a defendant’s guideline scoresheet, even if the prior conviction has not yet been affirmed on appeal. However, Florida appellate courts have held that a conviction cannot be used for the purpose of habitualizing a convicted defendant unless the appeal of the prior conviction has been finalized. State v. Peterson, 667 So.2d 199 (Fla. 1996); Breeze v. State, 641 So.2d 450 (Fla. 1st DCA 1994); Johnson v. State, 613 So.2d 143 (Fla. 2d DCA 1993). Thus, if a defendant is sentenced for a subsequent crime before the conviction for the previous crime is affirmed by the appellate court, the previous conviction cannot be used in order to enhance the sentence for the subsequent crime.

## **B. EFFECT OF PROPOSED CHANGES:**

### **Review of Claims of Insufficient Evidence**

The bill amends s. 924.051 to provide that when reviewing a claim that the evidence is insufficient to support a conviction, the appellate court must view the evidence in the light most favorable to the state, give the state the benefit of all inferences that logically may be drawn from the evidence and sustain the conviction if it is supported by competent, substantial evidence. The section also provides that a conviction may be based in whole or in part on circumstantial evidence. These provisions codify Florida case law on the subject.

The bill further provides that the evidence need not exclude every reasonable hypothesis except guilt. This provision is in conformity with federal law and would overrule case law in Florida which states that in order to support a conviction that is based solely on circumstantial evidence, the evidence must exclude every reasonable hypothesis of innocence.

The bill provides that an appellate court may not reverse the judgment of conviction on the ground of insufficiency of the evidence unless a rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt. This provision would codify the federal standard.

### **Harmless Error**

The bill provides that a judgment in a capital case may not be reversed unless the Florida Supreme Court is of the opinion, after an examination of the entire appellate record, that error was committed that so injuriously affected the substantial rights of the defendant that the error is not harmless. The Supreme Court may not presume that error injuriously affected the substantial rights of the defendant. This standard is different from the DiGuilio standard which requires the state to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict.

### **Successive Capital Postconviction Motions**

As discussed above, rule 3.850(f) generally allows a trial court to dismiss a successive postconviction motion unless new grounds are alleged. This bill attempts to further restrict a defendant's ability to file a successive postconviction motion by providing that the motion cannot be considered unless:

1. the facts underlying the claim, if proven and viewed in light of the evidence as a whole;
2. are sufficient to establish by clear and convincing evidence that;
3. but for the constitutional error;
4. a reasonable fact finder would not have found the defendant guilty of the underlying offense.

### **Staying of Postconviction Proceeding**

The bill provides that a postconviction proceeding may not be stayed based on a claim that the defendant is mentally ill, mentally deficient, mentally incompetent, or insane, unless such stay is issued under s.922.07. Thus, according to the provisions of this section, a capital defendant would not be entitled to a competency hearing during the postconviction process. This section does not interfere with any right a defendant has to a competency hearing before he or she is executed.

### **Demand for Documents in Collateral Proceeding**

The bill provides that upon demand by the state in a collateral proceeding, the defendant must timely provide the state copies of all documents to be introduced into evidence by the defense and the names and addresses of all defense witnesses in the collateral proceeding. This provision apparently applies in both capital and non-capital cases.

During pre-trial discovery, the state must provide the defense with discovery. This provision does not require the state to reciprocate and timely provide the defendant copies of all documents to be introduced into evidence by the state or the names and addresses of state witnesses in the collateral proceeding.

### **Properly Filed Postconviction Motion**

The bill provides that a capital postconviction motion must be "properly filed" within one year of the conviction becoming final. The section defines "properly filed" to mean that a postconviction motion or petition is complete, is accompanied by sworn affidavits substantiating any factual allegations therein, and is not subject to amendment. A postconviction motion or petition that is not properly filed does not toll the time limitations in this section. Currently, a postconviction motion must be sworn to but does not have to be accompanied by affidavits and is subject to amendment under certain circumstances.

### **Finality of Prior Convictions**

The bill provides that a trial court judgment in a criminal case or juvenile delinquency proceeding is final until overturned on appeal or collateral review. A judgment that is being appealed or that is under collateral review must be treated as final and may be used to enhance or reclassify any other conviction, sentence, adjudication, or disposition including but not limited to the following uses:

1. In computing a sentence under chapter 921;
2. As an aggravating circumstance;
3. As grounds for revoking probation or community control; and
4. As a predicate conviction for purposes of imposing a penalty provided for habitual offenders or repeat offenders or for imposing another enhanced or reclassified sentence.

This would overturn current case law which has held that a conviction that has not be affirmed on appeal cannot be used as a predicate offense for purposes of habitualizing a defendant.

**Severability Clause**

The bill contains a severability clause which provides that if any of its provisions are held to be invalid, the invalidity does not affect the other provisions.

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:

Sections 924.051, 924.055.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides standards for an appellate court reviewing a claim that the evidence is insufficient to support the conviction. Provides that the Florida Supreme Court cannot reverse a capital case unless error was committed which so injuriously affected the substantial rights of the defendant that the error is not harmless. Provides that a successive motion for collateral relief may not be considered unless certain conditions are met.

Section 2: Provides definition of term "properly filed" postconviction motion.

Section 3: Severability clause.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not met to determine the fiscal impact of this bill. The section which provides that a conviction can be used for purposes of enhancing a later sentence even if it has not been affirmed by the appellate court may allow a small number of defendants to be habitualized. This should only have an insignificant bed impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

The provision requiring a defendant to provide the State with copies of all documents to be introduced into evidence and the names and addresses of all defense witnesses does not require the state to reciprocate and timely provide the defendant with copies of the same.

The bill provides that a trial court judgment in a criminal case or juvenile delinquency case is final until overturned on appeal or collateral review and can be used in computing a sentence under chapter 921 (the criminal punishment code). However, a juvenile conviction older than three years cannot be used in computing a sentence under the criminal punishment code. Fla.R.Crim.P. 3.701(g). Further, juvenile adjudications cannot be used as a prior "convictions" in classifying a defendant as a habitual offender. Wilson v. State, 696 So.2d 528 (Fla. 4th DCA 1997).

The Florida Constitution grants the Florida Supreme Court exclusive rule-making authority over the courts. However, this power is limited to rules governing procedural matters and does not extend to substantive rights. Art. V, § 2(a), Fla. Const. Boyd v. Becker, 627 So.2d 481 (Fla. 1993). Sentencing guidelines are substantive in nature and therefore were properly promulgated by the legislature. Smith v. State, 537 So.2d 982, (Fla. 1989). In Gilbert v. K-Mart Corp, 664 So.2d 335 (Fla. 1st DCA 1995), the court found that the provision of the statute governing sanctions imposed following an unreasonable rejection of a settlement offer which requires the motion to be filed within 30 days after entry of judgment is procedural, and is superseded by provisions of Rules of Civil Procedure which govern subject of offers of judgment and authorize trial courts to enlarge time for performing acts.

Likewise, it is possible that the courts may find that several of the bill's provisions relating to postconviction motions infringe on the court's rule making authorities. The provisions include the definition of "properly filed" postconviction motions and the limitations on successive motions and amended motions. However, it is possible that the Court will adopt these portions as a rule of court.

**Constitutionality of Harmless Error Provision**

In Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), the United States Supreme Court held that "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Thus, courts have concluded that, even if a statute provides differently, the burden of demonstrating that an error is prejudicial cannot constitutionally be placed on the defendant in a criminal case, if the error is of a constitutional nature. Mason v. State, 719 So.2d 304 (Fla. 4th 1998). As a result, courts will probably construe the provision which provides that the Supreme Court may not presume that error injuriously affected the substantial rights of the defendant to only apply to error that is not constitutional in nature.

**Competency of Postconviction Defendant**

In Carter v. State, 706 So.2d 873 (Fla. 1997), the Florida Supreme Court ruled that a trial court must hold a competency hearing in a postconviction proceeding when a capital defendant shows that there are specific factual matters at issue which require the defendant to consult with his counsel. Although the opinion refers to a defendant's due process right to be competent to stand trial, the Court did not specifically hold that a defendant has a constitutional right to be competent during postconviction proceedings. However, it is possible that in the future, the Court will hold that a defendant has a constitutional right to a competency hearing if a defendant shows that there are specific factual matters at issue which require the defendant to competently consult with counsel. In that case, the Court would allow trial courts to hold such a hearing despite the provisions of this bill which state that a competency hearing need only be held in order to execute a defendant and the defendant claims he or she is incompetent.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

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Prepared by:

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