

STORAGE NAME: h0861z.cp
DATE: June 13, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-204, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
FINAL ANALYSIS**

BILL #: HB 861 (Passed as SB 840)

RELATING TO: Sexual Abuse Cases

SPONSOR(S): Representative Detert

TIED BILL(S): None

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (2) JUDICIARY YEAS 7 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS (W/D)
- (4)
- (5)

I. SUMMARY:

The "*corpus delicti*" rule evolved out of common law to protect persons from conviction of crimes they confessed to out of mistake, derangement or fabrication. It requires independent proof that a crime has been committed before a defendant's statement can be introduced at trial. In recent years the rule has been abandoned or significantly modified in other states and in federal courts. Under the Federal approach, the defendant's confession may be introduced "if corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth."

HB 861 allows the defendant's memorialized confession or admission to certain crimes to be admissible at trial without the state having to prove the "*corpus delicti*" of the crime if specific requirements are met. In order to admit such evidence the court must conduct a hearing outside the presence of the jury and find that the state is unable to show the existence of each element of the crime, and that the confession or admission is trustworthy. The bill contains a list of factors which may be relevant for the court to consider in determining whether the state is unable to show the existence of each element of the crime. Before making a finding that a defendant's statement is trustworthy, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence which tends to establish the statement's trustworthiness.

The Criminal Justice Impact conference has determined that this bill has no prison bed impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill requires an additional hearing on the trustworthiness of a confession before it may be admitted in a sex crime case.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

The term "*corpus delicti*" refers to proof independent of a confession that a crime charged was in fact committed. See, *Meyers v. State*, 704 So.2d 1368 (Fla. 1997), *Bassett v. State*, 449 So.2d 803 (Fla. 1984). The term literally means "the body of the crime." In order to admit a defendant's confession in a criminal trial, the state must first prove the *corpus delicti* of the crime either by direct or circumstantial evidence. See, *State v. Allen*, 335 So.2d 823, 825 (Fla.1976). It is enough if the evidence tends to show that the crime was committed. Although proof beyond a reasonable doubt is not required, the evidence must at least show each element of the crime before the confession is admissible. See, *Meyers, supra*, and *Burks v. State*, 613 So.2d 441 (Fla.1993).

The *corpus delicti* rule evolved out of common law to protect persons from conviction of crimes they confessed to out of mistake, derangement or fabrication. See, *Burks, supra*.

In recent years the rule has been abandoned or significantly modified in other states and in federal courts. See *Opper v. United States*, 348 U.S. 84 (1954); *Moll v. United States*, 413 F.2d 1233 (5th Cir. 1969); *State v. Kalani*, 649 P.2d 1188 (Haw. 1982); *Schultz v. State*, 264 N.W.2d 245 (Wis. 1978); *State v. George*, 257 A.2d 19 (N.H. 1969). Under the Federal approach, the defendant's confession may be introduced "if corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth." *Opper v. United States*, 348 U.S. 84 (1954). The government must prove the existence of "substantial independent evidence which would tend to establish the trustworthiness of the [confession]." *Id.* at 92.

The North Carolina Supreme Court evaluated the issue and identified three major versions of the *corpus delicti* rule in effect in state and federal courts. *State v. Parker*, 337 S.E.2d 487 (N.C. 1985).

- The majority rule in use by most states requires corroborative evidence, independent of a confession or admission, which tends to prove the commission of the crime charged. *Id.* at 490 (citations omitted).
- The rule in use by Florida and a minority of states requires corroboration by substantial evidence, independent of the accused's confession or admission, which tends to establish each and every element of the crime. *Id.* (citations omitted).

- The trend in the federal courts and some states requires proof of any corroborating circumstances which goes to fortify the truth of the confession or admission or tends to prove facts embraced in the confession or admission. *Id.* at 492. (citations omitted).

Justice Leander Shaw of the Florida Supreme Court has commented:

The rule requiring that the corpus delicti be proved before a confession can be admitted is an anachronism. It is a technicality that impedes rather than fosters the search for truth. I would therefore recede from cases requiring that the corpus delicti be proved before a confession can be admitted into evidence and adopt the "trustworthiness" test announced in the above cases.

Burks, supra, (Shaw concurring and dissenting) at 446.

Under the federal trend, the adequacy of the independent corroborating proof is measured by the extent to which it supports the trustworthiness of the confession or admission. *Parker, supra* at 492. The North Carolina Supreme Court adopted a variation on the federal rule, allowing admission of a confession or admission against interest if that confession or admission is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show that the defendant had the opportunity to commit the crime. The court also carefully noted that ". . . when independent proof of loss or injury is lacking, there must be strong corroboration of essential facts and circumstances embraced in the defendant's confession." *Id.* at 495.

Even though a confession or admission against interest is admitted, the state still has the ultimate burden to prove, beyond a reasonable doubt, the corpus delicti to support a conviction. *Meyers v. State*, 704 So.2d 1368 (Fla. 1997); *Cross v. State*, 96 Fla. 768 119 So. 380 (Fla. 1928). A confession or admission against interest standing alone will not meet the state's burden.

C. EFFECT OF PROPOSED CHANGES:

HB 861 eliminates the requirement, that the state must produce independent evidence of a crime to allow a jury to hear a criminal defendant's confession. The bill would only apply to prosecutions for the following crimes:

1. Sexual Battery, under s. 794.011 (this would include battery against an adult as well as a minor);
2. Unlawful Sexual Activity With Certain Minors, under s. 794.05;
3. Lewd, lascivious, or indecent assault or act upon or in the presence of a child, under s. 800.04;
4. Incest, under s. 826.04;
5. Aggravated Child Abuse, under 827.03;
6. Contributing to the Delinquency or Dependency of a Child, under s. 827.04;
7. Sexual Performance by a Child, under s. 827.071; or

8. Any other crime involving sexual abuse of another (this would include crimes against adults as well as minors).

HB 861 allows the defendant's memorialized confession or admission to any of the above crimes, or an attempt, conspiracy or solicitation to commit any of the above listed crimes, to be admissible at trial without the state having to prove the "*corpus delicti*" of the crime if specific requirements are met. In order to admit such evidence the court must conduct a hearing outside the presence of the jury and find that the state is unable to show the existence of each element of the crime, and that the confession or admission is trustworthy. The bill provides that "[f]actors which may be relevant in determining whether the state is unable to show the existence of each element of the crime include, but are not limited to, the fact that at the time the crime was committed the victim was:

- ▶ Physically helpless, mentally incapacitated, or
- ▶ mentally defective, as those terms are defined in s. 794.011;
- ▶ Physically incapacitated due to age, infirmity, or
- ▶ any other cause; or
- ▶ Less than 12 years of age.

Before making a finding that a defendant's statement is trustworthy, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence which tends to establish the statement's trustworthiness. The bill authorizes the use of hearsay evidence at the hearing, and specifically allows the court to consider the confession or admission in determining its trustworthiness.

In addition, the bill requires the court to provide the factual basis for its ruling on the record.

While the bill will loosen the requirements for admission of a confession in certain cases, the state will still have the burden to prove, beyond a reasonable doubt, the *corpus delicti* of the case. The court may not convict a person based on the confession or admission against interest alone. See *Meyers, supra*.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

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:

On March 16, 2000 the Criminal Justice Impact Conference determined that this bill would have no prison bed impact.

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:

This bill modifies the requirements for admission, during trial, of the defendant's confession or admissions to specific crimes. It does not affect the burden required to convict a defendant accused of these crimes.

At the same time, the bill's language does allow a court to admit a confession or admission against interest with hearsay alone serving as the corroborating evidence which tends to establish the statement's trustworthiness. It is, therefore, conceivable that the court could make its determination based solely on the confession or admission. Most state and federal courts which follow the relaxed *corpus delicti* rule require a showing of evidence, independent of the confession or admission, to corroborate the trustworthiness of the confession.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House adopted two floor amendments which made substantial changes to the bill as originally filed. One amendment limited the bill to authorize only memorialized (tape recorded or written) confessions or admissions of a defendant to be introduced at trial. The second amendment added the requirement that before a defendant's statement can be admitted, the court must find that state is unable to show the existence of each element of the crime. The second amendment also provided a list of factors which may be relevant to the court's determination of whether the state is able to show the elements of the crime.

VII. SIGNATURES:

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