

STORAGE NAME: h0861a.jud

DATE: March 15, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 861

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
 - (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 confession or admission to certain crimes to be admissible at trial without the state having to prove the "*corpus delicti*" of the crime. In order to admit such evidence the court must conduct a hearing outside the presence of the jury and find that the confession or admission is trustworthy.

The bill would apply to prosecutions for sex crimes committed against children, aggravated child abuse, sexual battery against an adult or a minor, contributing to the delinquency or dependency of a minor, or an attempt, conspiracy or solicitation to commit any of these crimes.

The bill may have a fiscal impact on the criminal justice system.

The bill shall take effect on becoming law.

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). So a confession or admission against interest 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).

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HB 861 allows the defendant's 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. In order to admit such evidence the court must conduct a hearing outside the presence of the jury and find that the confession or admission is trustworthy. 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:

There may be some minor fiscal impact caused by this bill if there are more convictions of persons accused of the enumerated crimes who would have escaped conviction under the current law.

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:

The bill's ostensible purpose is to foster convictions relating to sex crimes involving minors. However, the bill will capture crimes involving only adults as well.

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. A jury must find the defendant guilty beyond a reasonable doubt based on the confession and any other evidence before the defendant could be convicted.

At the same time, the bill's language could allow a court to admit a confession or admission against interest with no corroborating evidence other than hearsay. Moreover, the bill would allow the court to reach a determination of "trustworthiness" based on the confession or admission itself. It is conceivable that the court could make its determination based solely on the confession or admission. Most of the states and federal courts that follow the relaxed *corpus delicti* rule require a showing of evidence -- independent of the confession or admission -- that corroborates the trustworthiness of the confession. The North Carolina courts go one step further and require a showing of corroboration that includes facts which tend to show that the defendant had the opportunity to commit the crime.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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Staff Director:

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AS REVISED BY THE COMMITTEE ON JUDICIARY:

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