

**STORAGE NAME:** h0801.jo.doc  
**DATE:** February 20, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUDICIAL OVERSIGHT  
ANALYSIS**

**BILL #:** HB 801  
**RELATING TO:** Plea Agreements/Law Enforcement  
**SPONSOR(S):** Representative Barreiro  
**TIED BILL(S):** None.

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

- (1) JUDICIAL OVERSIGHT
  - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
  - (3) CRIMINAL JUSTICE APPROPRIATIONS
  - (4) SMARTER GOVERNMENT
  - (5)
- 

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Currently, state attorneys can enter into plea agreements with criminal defendants that bind the actions of all agents of the state, including law enforcement officers. This bill provides that no plea agreement shall "purport to bind the present or future action, judgment, or speech of law enforcement personnel at any court hearing, sentencing hearing, or parole hearing, or with regard to any investigation. Any such plea agreement is prohibited, precluded, and vitiated without the express knowledge and consent of such law enforcement personnel."

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill would effectively require law enforcement approval of plea agreements. Under current law, only the state attorney, the trial judge, and the criminal defendant must approve such agreements.

B. PRESENT SITUATION:

Plea Agreements in Criminal Cases

A person charged with a crime has a right under the federal and state constitutions to a trial by jury. See U.S. Const. Amend 6, Art. I, s. 22, Fla. Const. However, nearly all criminal cases are disposed of by a plea agreement between the state, represented by the state attorney, and the criminal defendant. In such agreements, the criminal defendant waives his or her right to trial and, in exchange, the state makes concessions. For example, the state attorney may drop other charges against the defendant, recommend a specific sentence, allow the defendant to enter a plea to a lesser charge than the charge initially filed, or reach some other agreement with the defendant. Plea agreements can have provisions relating to the cooperation of the defendant in future investigations, provisions that the defendant enter drug or alcohol counseling, or provisions requiring the defendant make restitution to the victim.

The trial judge is not bound by a plea agreement, but generally follows it.. Florida Rule of Criminal Procedure 3.172 governs the conduct of trial judges when accepting pleas. Since a defendant is giving up constitutional rights when he or she enters a plea, the trial judge is required to inquire whether the plea is voluntary and there is a factual basis for it. See Fla.R.Crim.P. 3.172(a), (c). If the state and the defendant have reached an agreement and the trial judge does not concur, the plea may be withdrawn. See Fla.R.Crim.P. 3.172(g). A defendant may also enter a plea to the crime charged and be sentenced by the trial judge without any agreement from the state.

Either the state or a defendant may file a motion to vacate or withdraw a plea under certain circumstances. See Fla.R.Crim.P. 3.170; Fla.R.App.P. 9.140(b)(2). One such circumstance is failure of either party to abide by the terms of the plea agreement.

Lee v. State

In Lee v. State, 501 So. 2d 591 (Fla. 1987), the Florida Supreme Court held that a defendant must be permitted to withdraw a plea when a law enforcement officer makes an independent recommendation to the trial court that runs counter to the recommendation in the agreement

entered into with the state attorney's office. In Lee, the defendant negotiated a plea agreement with the state attorney in which the state agreed not to recommend a specific sentence. Lee, 501 So. 2d at 591-592. However, in a presentence investigation report submitted to the court prior to sentencing, an agent of the Florida Department of Law Enforcement recommended a sentence of incarceration. Lee, 501 So. 2d at 592. The trial court did not allow Lee to withdraw his plea and the Supreme Court reversed the trial court. In holding that the trial court erred, the Supreme Court explained:

The state's failure to adhere to the terms of a plea agreement even when the noncompliance is purely inadvertent constitutes good cause for withdrawal of a plea under [the Florida Rules of Criminal Procedure]. As noted by the United States Supreme Court ... "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."

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The narrow issue presented in this case is whether a promise contained in a plea agreement that the "state" will recommend a given sentence binds only the state attorney's office or whether it also precludes other state agents, such as state law enforcement officers, from making sentencing recommendations contrary to the terms of the agreements.

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Under Florida Rule of Criminal Procedure 3.171, the prosecuting attorney represents the state in all plea negotiations. We agree ... that **once a plea bargain based on a prosecutor's promise that the state will recommend a certain sentence is struck, basic fairness mandates that no agent of the state make any utterance that would tend to compromise the effectiveness of the state's recommendation.**

Lee, 501 So. 2d at 592-593. (emphasis added; citations omitted).

Lee's rule that a law enforcement officer is an agent of the state was expanded to apply to probation officers in Thomas v. State, 593 So. 2d 219 (Fla. 1992) ("Clearly, a probation officer is an agent of the 'state,' notwithstanding the State's surprising assertion to the contrary."). In Thomas, the state agreed to "stand silent" at sentencing but, in the presentence investigation, a probation officer included information about the defendant's prior record and recommended a prison sentence. Thomas, 593 So. 2d at 220-221. The court held that the probation officer was an agent of the state and that the state breached the agreement. Thomas was permitted to withdraw his plea. Id. at 221.

The Court of Appeals of Utah, in State of Utah v. Thurston, 781 P.2d 1296 (Utah 1989), considered Lee and reached the opposite conclusion. That court held that a prosecutor's plea bargain does not bind other agents of the state. The court explained:

There are times when law enforcement has pertinent information not always known to the State at the time a plea bargain is consummated, and that agency should have an opportunity to present its views to the court.

We also find that sound public policy requires a plea agreement reached by a prosecutor not to be binding on other state agencies.

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Binding a law enforcement agency or any other party to a prosecutor's sentencing recommendation would limit the trial court's access to all of the facts and, consequently, hinder the appropriate exercise of the judge's discretion.

Thurston, 781 P.2d at 1300.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that no plea agreement shall "purport to bind the present or future action, judgment, or speech of law enforcement personnel at any court hearing, sentencing hearing, or parole hearing, or with regard to any investigation. Any such plea agreement is prohibited, precluded, and vitiated without the express knowledge and consent of such law enforcement personnel."

See "Constitutional Issues" and "Other Comments".

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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:

Article V, s. 2, Fla. Const., provides that the Supreme Court "shall adopt rules for the practice and procedure in all courts". Just as the Legislature has the power to create substantive law, the court has the power to create rules of practice and procedure in the courts. The court has established rules regarding the acceptance of pleas in Florida Rule of Criminal Procedure 3.172. To the extent that this bill limits a trial judge's ability to accept or reject pleas, it can be argued that this bill violates the constitutional requirement that the Supreme Court make rules of practice and procedure in the courts.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

This bill could have the effect of preventing state attorneys from entering into plea agreements if a law enforcement officer objects to the agreement.

This bill is not clear on what would occur if a court accepted such a plea contrary to the bill's provisions. Since courts have held that a defendant cannot enter a plea to an illegal sentence, see e.g. King v. State, 681 So. 2d 1136, 1140 (Fla.1996) (noting "a trial court cannot impose an illegal sentence pursuant to a plea bargain"), it could be argued that any plea agreement that purports to bind the actions of law enforcement would be illegal. If a court were to so hold, a defendant might be entitled to withdraw his plea even many years after the fact.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

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L. Michael Billmeier, Jr., J.D.

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Nathan L. Bond, J.D.