

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 197 Relating to Plea Agreements
SPONSOR(S): Rep. Barreiro
TIED BILLS: **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice</u>	_____	<u>Maynard</u>	<u>De La Paz</u>
2) <u>Public Safety and Crime Prevention</u>	_____	_____	_____
3) <u>Judiciary</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

On July 14, 1982, Officer Cheryl Seiden was killed during an armed robbery in the parking lot of her condominium complex. She was followed for fourteen miles by two assailants, one of whom demanded her hand bag, she reached for her gun, and was shot twice. The shooter was convicted of first degree murder and four counts of armed robbery and was sentenced to four life sentences and 15 years in prison, in part through the cooperation at trial of the other assailant, Dwight Eschevarria. Eschevarria's plea agreement provided that in return for his testimony at trial against his codefendant, prosecutors agreed not to oppose his parole requests during his life sentence. However, in 1999 the State Attorney at that time wrote a letter to the parole board which negatively commented on the defendant's parole bid. In December of 2001, a circuit court judge permitted Echevarria to withdraw his plea.

House Bill 197 creates a section of the Florida Statutes to be popularly titled the "Officer Cheryl Seiden Act" which would prevent plea agreements which purported to bind future actions, judgment, or speech of law enforcement officers or their representatives at a court hearing, sentencing hearing, or parole hearing or any investigation unless notice has been provided. The bill defines the term "law enforcement officer" as the one in s. 943.10, F.S. Failure to comply with the created section would not constitute grounds for withdrawal of a defendant's plea.

Some possible issues which could be raised with regard to the bill is the failure to define certain terms, such as "proffered," "reasonable notice," or "affected officer." Also nowhere in the bill does it specify that the law enforcement officer whose speech, judgment, or investigative ability may not be constricted must be the victim of the crime. In addition, Florida Statutes 921.143 and 960.001(e) already provide an affirmative duty for courts to hear from victims, and for state attorneys to keep victims of crimes involving emotional or physical trauma apprised of court hearings. The bill also does not specify which court participant's responsibility it is to provide notice. Finally, in determining which pleas may be accepted by a court and in adding a notice requirement to plea hearings, an argument could be raised that the bill would infringe upon the rule-making power of the court over practice and procedure.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Under current Florida law, victims of crimes and their representatives are entitled to provide written or oral statements at the sentencing hearing before a court imposes a sentence. Florida Statute 921.143 places an affirmative duty on courts to permit victim statements. The same statute specifically authorizes courts not to accept a plea and order the defendant to stand trial. Florida Statute 960.001(e) provides for advance notification by law enforcement of court proceedings to be provided to the victim or representative of the victim. 960.001(g) lists various matters including plea agreements that victims or families of victims of felonies involving emotional or physical trauma or a homicide shall be consulted by the state attorney.

House Bill 197 creates a section of the Florida Statutes to be popularly titled the "Officer Cheryl Seiden Act" which would prevent plea agreements which purport to bind future actions, judgment, or speech of law enforcement officers or their representatives at a court hearing, sentencing hearing, or parole hearing or any investigation unless notice has been provided. The bill defines the term "law enforcement officer" as the one in s. 943.10, F.S. Failure to comply with the created section would not constitute grounds for withdrawal of a defendant's plea.

Although Florida Statutes 921.143 addresses the requirement of courts and prosecutors to provide notice to victims and their representatives and permits a court to not accept a plea agreement, this bill seeks to address particular situations in which prosecutors make agreements which would purport to bind law enforcement officers or their representatives from speaking.

C. SECTION DIRECTORY:

Section 1. provides for the creation of a new subsection of 921.1435 relating to notice requirements for plea agreements. It declares the popular name for the section shall be the "Officer Cheryl Seiden Act."

Section 2. provides an effective date.

II. 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:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

Although evaluation of the impact of bill is unavailable at this time, it appears as though the fiscal impact to state and local governments will be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision

3. Other:

Article V, Section 2(a) of the Florida Constitution provides that “[t]he supreme court shall adopt rules for the practice and procedure in all courts . . .” Because the Florida Constitution provides that this rule-making authority over court procedures is vested in the judiciary, the Legislature may not pass a law which would infringe on that power. Arguably, a bill which adds a notice requirement to a court hearing in which a plea is proffered or prevents a court from accepting certain pleas could be unconstitutional if these activities were deemed “procedural.”

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

Some issues which could be raised regarding the bill include the failure of the bill to define “proffered,” “reasonable notice” or “affected officer.” Moreover, the language of the bill does not specify that the law enforcement officer whose language or action would be circumscribed by a plea must be the victim of the crime. Finally, the bill does not specify which party, whether the court, law enforcement, or the state attorney, has the responsibility of providing “reasonable notice.”

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES