

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283 w/CS Relating to Plea Agreements
SPONSOR(S): Rep. Barreiro
TIED BILLS: **IDEN./SIM. BILLS:** SB 118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice (Sub)</u>	<u>7 Y, 0 N</u>	<u>Maynard</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>	<u>17 Y, 0 N w/CS</u>	<u>Maynard</u>	<u>De La Paz</u>
3) <u>Judiciary</u>	<u>14 Y, 0 N</u>	<u>Havlicak</u>	<u>Havlicak</u>
4) _____	_____	_____	_____
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. When one of them 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. He 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 the codefendant, prosecutors agreed not to oppose his parole requests during his life sentence. However, in 1999 the State Attorney 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.

This bill creates the "Officer Cheryl Seiden Act." The bill creates a new subsection of s. 921.143, F.S. which would prevent plea agreements that prohibit law enforcement, correctional, or correctional probation officers from appearing at or speaking at a parole or clemency hearing. The bill defines the terms "law enforcement officer," "correctional officer," "correctional probation officer" and "employing agency" with a cross reference to those definitions in s. 943.10, F.S. Moreover, in cases in which the victim of the offense is one of these designated officers, the bill provides that a plea agreement may not prohibit the officer or authorized representative of the officer from appearing or providing a statement at the sentencing hearing.

Sections 921.143 and 960.001(e), F.S. currently 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.

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

STORAGE NAME: h0283d.ju.doc
DATE: March 11, 2004

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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. Section 921.143, F.S. 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. Section 960.001(e), F.S. provides for advance notification by law enforcement of court proceedings to be provided to the victim or representative of the victim. Section 960.001, F.S. provides for the guidelines for the fair treatment of victims. Subsection (g) requires state attorneys to consult with and notify victims of violent crimes or their family members about plea agreements. The rights of victims and their families to receive notice and to be heard is specifically protected in Article I, section 16(b) of the Florida Constitution.

This bill creates the Officer Cheryl Seiden Act (Act). The bill creates a section of the Florida Statutes that would prevent plea agreements which prohibit a law enforcement officer, correctional officer, or correctional probation officer from appearing at or speaking at a parole hearing or clemency hearing. The bill utilizes the same definitions found in s. 943.10, F.S. for the terms "law enforcement officer," "correctional officer," "correctional probation officer," and "employing agency." Moreover, in cases in which the victim of the offense is one of the designated officers, the bill provides that a plea agreement may not prohibit the officer or authorized representative of the officer from appearing or providing a statement at the sentencing hearing. The bill also specifically states that this Act is not to impair any right afforded to victims under chapter 960 or Article I, section 16(b) of the Florida Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 921.143, F.S. relating to victim statements at sentencing hearings.

Section 2 provides for an effective date of July 1, 2004.

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:

None.

D. FISCAL COMMENTS:

The bill only applies to cases which a plea agreement binds the ability of certain officers to testify at sentencing, clemency, and parole hearings. Such agreements are likely uncommon. Although the criminal justice estimating conference has not yet evaluated the fiscal impact of this bill, the class of cases to which it applies would likely be too small to have any significant impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

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 for the courts.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In addition, the bill contains a clause which states that the subsection does not impair any right afforded under chapter 960, F.S. or Article I, section 16(b) of the Florida Constitution. Statutes which impair state constitutional rights are per se unconstitutional and as such not enforceable. Should a court determine that for some reason the statute did impair state constitutional victim's rights, the clause as it relates to the Florida's constitution would be meaningless and void.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 4, 2003, the Criminal Justice Subcommittee favorably recommended a technical amendment to the bill. The bill specifies that the terms "law enforcement officer," "correctional officer," and "correctional probation officer" as used in the subsection have the same definitions as those in s. 943.10, F.S. However, in the bill the types of officers are not listed separately, but rather together in the form "law enforcement, correctional, or correctional probation officer" Since the terms are defined separately, the technical amendment clarifies the terms in the subsection by listing them as they are defined in the form "law enforcement officer, correctional officer, or correctional probation officer."

On February 17, 2003, the Committee on Public Safety & Crime Prevention adopted a committee substitute which popularly titles the law as the Officer Cheryl Seiden Act. The bill also adopts language of a previously favorably recommended amendment which lists that the terms "law enforcement officer," "correctional officer," and "correctional probation officer" as used in s. 943.10, F.S.

There were no amendments offered in the Judiciary Committee on March 11, 2004.