

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.

HB 283 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," or "correctional probation officer." 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 provides a clause which specifically states that the subsection is not to impair any right afforded to victims under Article I, section 16(b) of the Florida Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 943.143, F.S. to add in a new subsection.

Section 2 provides for 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:

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:

N/A

2. Other:

None.

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."