

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 869 w/CS Adjudication of Guilt

**SPONSOR(S):** Gelber

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub.)	7 Y, 0 N	Kramer	De La Paz
2) Public Safety & Crime Prevention	19 Y, 0 N w/CS	Kramer	De La Paz
3) Judiciary			
4)			
5)			

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### SUMMARY ANALYSIS

HB 869 with committee substitute creates section 775.08435, F.S. which prohibits the withhold of adjudication for a felony offense in certain circumstances as follows:

- **First Degree Felony:** The committee substitute provides that a court may not withhold adjudication of guilt upon a defendant for a capital, life or first degree felony offense.
- **Second Degree Felony:** The committee substitute provides that a court may not withhold adjudication of guilt upon a defendant for a second degree felony offense unless the state attorney requests in writing that adjudication be withheld or the judge makes written findings that the withhold of adjudication is reasonably justified based on certain factors. The committee substitute prohibits a withhold of adjudication of guilt for an second degree felony offense if the defendant has a prior withhold of adjudication for a felony that did not arise from the same transaction as the current felony offense.
- **Third Degree Felony:** The committee substitute provides that a court may not withhold adjudication of guilt for a third degree felony offense if the defendant has a prior withhold of adjudication for a felony offense that did not arise from the same transaction as the current felony offense unless the state attorney requests that adjudication be withheld in writing or the judge makes the written findings described above. The committee substitute would prohibit a withhold of adjudication if the defendant has two or more prior withholds of adjudication for felony offenses that did not arise from the same transaction as the current felony offense.

The committee substitute repeals Florida Rule of Criminal Procedure 3.670 to the extent that it is inconsistent with the provisions of the bill. The committee substitute takes effect on July 1, 2004 except that the repeal of the rule of procedure will take effect only if passed by a 2/3 vote of each house of the Legislature.

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

**STORAGE NAME:** h0869a.ps.doc

**DATE:** March 5, 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 type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" 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:

When a defendant is found guilty after a trial or pleads guilty or nolo contendere, a judge is permitted to withhold the judgment of guilt for the offense. This is known as a withhold of adjudication. Section 948.01(2) provides that if it appears to a judge that a defendant is “not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by the law”, the judge may withhold the adjudication of guilt and place the defendant on probation. Florida Rule of Criminal Procedure 3.670 provides that if a defendant is found guilty, a judgment of guilt shall be rendered in open court and in writing, signed by the judge, filed and recorded. The rule provides that a judge may withhold adjudication of guilt if the judge places the defendant on probation

During January of 2004, the Miami Herald published a series of articles<sup>1</sup> relating to withholds of adjudication. According to the newspaper’s review of Florida felony cases between 1993 and 2002, nearly 17,000 defendants received more than one withhold of adjudication<sup>2</sup>. The series of articles documented the details of a number of instances in which offenders received repeated withholds of adjudication. The newspaper claimed to have found more than 67,000 new crimes committed by offenders who had adjudication withheld for their first conviction.<sup>3</sup> According to the articles, withholds of adjudication are often used as a tool in plea bargaining a case.

The Bureau of Research and Data Analysis of the Department of Corrections reports the following:

[A]s of December 31, 2003, there were 60,091 offenders (out of 152,343) on supervision that had adjudication withheld. Of these, 9,768 had adjudication withheld on more than three (3) different felony convictions.

In Florida, a felony conviction impacts a person’s civil rights such as the right to vote<sup>4</sup> and to possess a firearm. However, if adjudication of guilt is withheld, these rights are not suspended.<sup>5</sup>

<sup>1</sup> The articles were published on January 25 – 28, 2004; See

<http://www.miami.com/mld/miamiherald/news/photos/7788988.htm>

<sup>2</sup> “A second chance turns into many”, *Miami Herald*, January 27, 2004;

<http://www.miami.com/mld/miamiherald/7807123.htm>

<sup>3</sup> *Id.*

<sup>4</sup> Article VI, Section 4, Florida Constitution; s. 97.041, F.S.

<sup>5</sup> In *Snyder v. State*, 673 So.2d 9 (Fla. 1996), the defendant claimed that the statute making it unlawful for felony to possess a firearm, s. 790.23, F.S., did not apply to a conviction that was on appeal. The Florida Supreme Court held that a defendant is “convicted” when adjudicated guilty.

The Florida Supreme Court has noted that “although an adjudication of guilt is generally required for there to be a ‘conviction’, that term as used in Florida law is a ‘chameleon-like term that has drawn its meaning from the particular statutory context in which the term is used” State v. McFadden, 772 So.2d 1209 (Fla. 2000)(citations omitted) . For example, under the Florida Evidence Code, evidence of a prior felony conviction can be used to attack the credibility of a witness.<sup>6</sup> The Florida Supreme Court has held that this evidence cannot be used if adjudication was withheld for the prior conviction. Id. However, in Raulerson v. State, 763 So.2d 285 (Fla. 2000), the Florida Supreme Court considered the issue of whether the term “conviction” as used in the statute that provides for increased sanctions for a third conviction of driving with a suspended license, includes offenses for which adjudication was withheld. The court examined the statutory language and legislative history and determined that the term included offenses for which adjudication was withheld. Further, in McCrae v. State, 395 So.2d 1145 (Fla. 1980), the Court held that a guilty plea or verdict with a withhold of adjudication constituted a conviction which could be considered an aggravating circumstance in a capital sentencing proceeding.

There are a number of offenses for which a judge is statutorily prohibited from withholding adjudication of guilt including the offenses of DUI manslaughter, assault or battery on a law enforcement officer and drug trafficking.<sup>7</sup>

HB 869 with committee substitute creates section 775.08435, F.S. which places restrictions on withholds of adjudication as follows:

- *First Degree Felony*: The committee substitute provides that a court may not withhold adjudication of guilt upon a defendant for a capital, life or first degree felony offense.
- *Second Degree Felony*: The committee substitute provides that a court may not withhold adjudication of guilt upon a defendant for a second degree felony offense unless the state attorney requests in writing that adjudication be withheld or the court makes findings that the withhold of adjudication is reasonably justified based on circumstances or factors in accordance with the factors considered by a judge in imposing a downward departure sentence contained in s. 921.0026, F.S.<sup>8</sup>. The committee substitute prohibits a withhold of adjudication of guilt for an

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<sup>6</sup> s. 90.610(1), F.S.

<sup>7</sup> See ss. 316.656, 784.07 and 893.135(3), F.S. Other offenses for which a judge is prohibited from withholding adjudication include: boating under the influence which results in manslaughter (s. 327.36); offenses for which a minimum mandatory term of imprisonment must be imposed under “10-20-Life” (s. 775.087); offenses relating to weapons of mass destruction (ss. 790.163, 790.164, 790.165, 790.166, F.S.); bookmaking (s. 849.25, F.S.); and assault or battery on a person over the age of 65 (s. 784.08, F.S.)

<sup>8</sup> According to s. 921.0026(1), F.S. downward departure from the lowest permissible sentence is prohibited unless “there are circumstances or factors that reasonably justify the downward departure.” In other words, a judge is not permitted to impose a sentence below the lowest permissible sentence unless the judge makes specific findings justifying the downward departure. Section 921.0026 contains a list of mitigating factors which can justify a departure sentence including the following:

- (a) The departure results from a legitimate, uncoerced plea bargain.
- (b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- (c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- (d) The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.
- (e) The need for payment of restitution to the victim outweighs the need for a prison sentence.
- (f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.
- (g) The defendant acted under extreme duress or under the domination of another person.
- (h) Before the identity of the defendant was determined, the victim was substantially compensated.
- (i) The defendant cooperated with the state to resolve the current offense or any other offense.
- (j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- (k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.
- (l) The defendant is to be sentenced as a youthful offender.

second degree felony offense if the defendant has a prior withhold of adjudication for a felony that did not arise from the same transaction as the current felony offense.

- *Third Degree Felony:* The committee substitute provides that a court may not withhold adjudication of guilt for a third degree felony if the defendant has a prior withhold of adjudication for a felony offense that did not arise from the same transaction as the current felony offense. The committee substitute would prohibit a withhold of adjudication if the defendant has two or more prior withholds of adjudication for felony offenses that did not arise from the same transaction as the current felony offense.

The committee substitute repeals Florida Rule of Criminal Procedure 3.670 to the extent that it is inconsistent with the provisions of the bill. The committee substitute takes effect on July 1, 2004 except that the repeal of the rule of procedure will take effect only if passed by a 2/3 vote of each house of the Legislature.

#### C. SECTION DIRECTORY:

Section 1: Creates s. 775.08435, F.S.; prohibits withhold of adjudication of guilt under certain circumstances.

Section 2: Repeals Florida Rule of Criminal Procedure 3.670 to the extent that it is inconsistent with the provisions of the bill.

Section 3. Provides effective date.

## II. 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.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

*Original bill:* HB 869, as originally filed, prohibited a court from withholding adjudication of guilt upon a defendant for any felony offense if the defendant had a prior withhold of adjudication for a felony that did not arise out of the same transaction as the current felony. The bill provided an exception for cases in which the prior withhold was more than 5 years prior to the date of the commission of the current felony offense, the defendant has not been adjudicated guilty of any felony since the prior withhold of adjudication and the state attorney requests that adjudication be withheld or the court makes written findings setting forth specific facts supporting its conclusion that failure to withhold adjudication would cause manifest injustice. The original bill also prohibited a court from withholding adjudication for a felony if the defendant had two or more prior withholds of adjudication for felony offenses that did not arise from the same transaction as the current felony offense.

*Committee Amendment:* The Subcommittee on Criminal Justice recommended the adoption of a strike-all amendment which adopted the provisions described in the above EFFECT OF PROPOSED CHANGES section. The Committee on Public Safety & Crime Prevention adopted the recommended amendment.