

STORAGE_NAME: s0044Hz.cj
DATE: June 19, 1992

*** PASSED BY THE LEGISLATURE ***
CHAPTER 211, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: SB 44-H
RELATING TO: Offense of Witness Tampering
SPONSOR(S): Senator Johnson
STATUTE(S) AFFECTED: s. 914.22(1), Fla. Stat.
COMPANION BILL(S): HB 49-H (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE: HB 49-H

- (1) CRIMINAL JUSTICE YEA 11 NAY 0
- (2) APPROPRIATIONS WITHDRAWN
- (3)
- (4)
- (5)

I. SUMMARY:

In State v. Cohen, 568 So.2d 49 (Fla. 1990), the Florida Supreme Court held that the witness tampering statute failed to indicate whether it was intended to criminalize efforts to influence only untruthful, or both truthful and untruthful testimony. Specifically, the court found the provision which made it unlawful to influence another person's testimony in an official proceeding unconstitutionally vague.

This bill provides, in part, that it is a third degree felony for any person to intimidate, threaten, or offer compensation to another person with the intent to induce that person to testify untruthfully in an official investigation or proceeding. A third degree felony is punishable by up to five years imprisonment, or an extended term of imprisonment if sentenced as a habitual felony offender, and a fine not exceeding \$5,000.

This bill may have a fiscal impact on state and local governments if more persons are charged with, and convicted of, the third degree felony offense of witness tampering. It is anticipated that any impact would be minimal but a precise fiscal impact is indeterminate.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 914, Florida Statutes, addresses witnesses and criminal proceedings. Section 914.22, Fla. Stat., describes the offense of tampering with a witness, victim, or informant. It is a third degree felony for any person to knowingly use intimidation or physical force, threaten, engage in misleading conduct toward another person, or offer pecuniary benefit or gain to another person, with the intent to cause or induce that person to:

- Withhold testimony, or withhold a record, document, or other object, from an official investigation or proceeding;
- Alter, destroy, mutilate, or conceal an object with the intent to impair the integrity or availability of the object for use in an official investigation or proceeding;
- Evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official investigation or proceeding;
- Be absent from an official proceeding to which the person has been summoned by legal process; or
- Hinder, delay, or prevent the communication of information to a law enforcement officer or a judge when such information relates to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding.

A third degree felony is punishable by up to five years imprisonment, or an extended term of imprisonment if sentenced as a habitual felony offender, and a fine not exceeding \$5,000.

The Florida Supreme Court held that certain subsections of the witness tampering statute were unconstitutional in State v. Cohen, 568 So.2d 49 (Fla. 1990). These provisions, specifically ss. 914.22(1)(a) and (3), Fla. Stat. (1989), were repealed during the 1991 legislative session to conform to the Supreme Court's decision [Chapter 91-223, Laws of Florida]. The court held that the provision which made it unlawful to influence the testimony of any person in an official proceeding was unconstitutionally vague because it failed to indicate whether it was intended to criminalize efforts to influence only untruthful, or both truthful and untruthful testimony.

B. EFFECT OF PROPOSED CHANGES:

This bill adds a new paragraph (f) to section 914.22, Fla. Stat., to provide that it is a third degree felony for any person to knowingly use intimidation or physical force, threaten, engage in misleading conduct toward another person, or offer pecuniary benefit or gain to another person, with the intent to cause or induce that person to testify untruthfully in an official investigation or proceeding.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 914.22(1), Fla. Stat., relating to tampering with a witness, victim, or informant, as described above.

Sections 2 through 4 reenact ss. 914.24(1)(a) and (2)(a), 772.102(1)(a), and 895.02(1)(a), Fla. Stat., relating to civil actions to restrain harassment of a victim or witness, civil remedies for criminal practices, and racketeering offenses, to incorporate the amendment to s. 914.22(1), Fla. Stat., in cross references.

Section 5 provides that the act takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

None anticipated.

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated.

D. FISCAL COMMENTS:

This bill may have a fiscal impact on state and local governments if more persons are charged with, and convicted of, the third degree felony offense of witness tampering. It is anticipated that any impact would be minimal but a precise fiscal impact is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Exempt as a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

On June 4, 1992, HB 49-H was laid on the table and the companion Senate bill passed the House (YEA 108, NAY 0).

The Office of the Attorney General supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:

Staff Director:

Kristin S. Pingree

Susan G. Bisbee

FINAL ANALYSIS PREPARED BY COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:

Staff Director:

Kristin S. Pingree

Kristin S. Pingree

Susan G. Bisbee

Susan G. Bisbee

STORAGE NAME: h0049Ha.cj
DATE: June 1, 1992

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 49-H
RELATING TO: Offense of Witness Tampering
SPONSOR(S): Representative De Grandy
STATUTE(S) AFFECTED: s. 914.22(1), Fla. Stat.
COMPANION BILL(S): SB 44-H (s)

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

- (1) CRIMINAL JUSTICE YEA 11 NAY 0
- (2) APPROPRIATIONS
- (3)
- (4)
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I. SUMMARY:

In State v. Cohen, 568 So.2d 49 (Fla. 1990), the Florida Supreme Court held that the witness tampering statute failed to indicate whether it was intended to criminalize efforts to influence only untruthful, or both truthful and untruthful testimony. Specifically, the court found the provision which made it unlawful to influence another person's testimony in an official proceeding unconstitutionally vague.

This bill provides, in part, that it is a third degree felony for any person to intimidate, threaten, or offer compensation to another person with the intent to induce that person to testify untruthfully in an official investigation or proceeding. A third degree felony is punishable by up to five years imprisonment, or an extended term of imprisonment if sentenced as a habitual felony offender, and a fine not exceeding \$5,000.

This bill may have a fiscal impact on state government if more persons are charged with, and convicted of, the third degree felony offense of witness tampering. It is anticipated that any impact would be minimal but a precise fiscal impact is indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 914, Florida Statutes, addresses witnesses and criminal proceedings. Section 914.22, Fla. Stat., describes the offense of tampering with a witness, victim, or informant. It is a third degree felony for any person to knowingly use intimidation or physical force, threaten, engage in misleading conduct toward another person, or offer pecuniary benefit or gain to another person, with the intent to cause or induce that person to:

- Withhold testimony, or withhold a record, document, or other object, from an official investigation or proceeding;
- Alter, destroy, mutilate, or conceal an object with the intent to impair the integrity or availability of the object for use in an official investigation or proceeding;
- Evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official investigation or proceeding;
- Be absent from an official proceeding to which the person has been summoned by legal process; or
- Hinder, delay, or prevent the communication of information to a law enforcement officer or a judge when such information relates to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding.

A third degree felony is punishable by up to five years imprisonment, or an extended term of imprisonment if sentenced as a habitual felony offender, and a fine not exceeding \$5,000.

The Florida Supreme Court held that certain subsections of the witness tampering statute were unconstitutional in State v. Cohen, 568 So.2d 49 (Fla. 1990). These provisions, specifically ss. 914.22(1)(a) and (3), Fla. Stat. (1989), were repealed during the 1991 legislative session to conform to the Supreme Court's decision [Chapter 91-223, Laws of Florida]. The court held that the provision which made it unlawful to influence the testimony of any person in an official proceeding was unconstitutionally vague because it failed to indicate whether it was intended to criminalize efforts to influence only untruthful, or both truthful and untruthful testimony.

B. EFFECT OF PROPOSED CHANGES:

This bill adds a new paragraph (f) to section 914.22, Fla. Stat., to provide that it is a third degree felony for any person to knowingly use intimidation or physical force, threaten, engage in misleading conduct toward another person, or offer pecuniary benefit or gain to another person, with the intent to cause or induce that person to testify untruthfully in an official investigation or proceeding.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 914.22(1), Fla. Stat., relating to tampering with a witness, victim, or informant, as described above.

Section 2 reenacts ss. 914.24(1)(a) and (2)(a), 772.102(1)(a)29., and 895.02(1)(a)33., Fla. Stat., relating to civil actions to restrain harassment of a victim or witness, civil remedies for criminal practices, and racketeering offenses, to incorporate the amendment to s. 914.22(1), Fla. Stat., in cross references.

Section 3 contains special session disclaimer language.

Section 4 provides that the act takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

None anticipated.

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated.

D. FISCAL COMMENTS:

This bill may have a fiscal impact on state and local governments if more persons are charged with, and convicted of, the third degree felony offense of witness tampering. It is anticipated that any impact would be minimal but a precise fiscal impact is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Exempt as a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

The Office of the Attorney General supports this bill.

An identical bill, HB 1829, was considered during the 1992 regular session. HB 1829 was reported favorably by the Committee on Criminal Justice, passed the House on March 11, 1992 (YEA 113, NAY 0), and subsequently died in the Senate Committee on Criminal Justice.

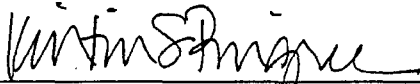
VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

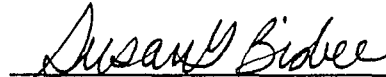
VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:
Prepared by:

Staff Director:



Kristin S. Pingree



Susan G. Bisbee

STORAGE NAME: h0049H.cj
DATE: May 29, 1992

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 49-H
RELATING TO: Offense of Witness Tampering
SPONSOR(S): Representative De Grandy
STATUTE(S) AFFECTED: s. 914.22(1), Fla. Stat.
COMPANION BILL(S): SB 44-H (s)

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- (2) APPROPRIATIONS
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III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

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2. Recurring Effects:

See fiscal comments.

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2. Direct Private Sector Benefits:

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V. COMMENTS:

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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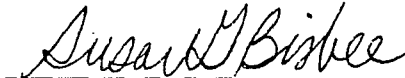
VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:
Prepared by:

Staff Director:



Kristin S. Pingree



Susan G. Bisbee

1	A bill to be entitled	1:btc
2	An act relating to the offense of witness	1.2
3	tampering; amending s. 914.22, F.S.;	
4	prohibiting causing or inducing a person to	1.3
5	testify untruthfully in an official	
6	investigation or proceeding, for which criminal	1.4
7	penalties are provided by law, and reenacting	
8	ss. 914.24(1)(a) and (2)(a), 772.102(1)(a)29.,	1.5
9	and 895.02(1)(a)33., F.S., relating to civil	
10	actions to restrain harassment of a victim or	1.6
11	witness, civil remedies for criminal practices,	
12	and racketeering offenses, to incorporate said	1.7
13	amendment in references thereto; providing an	
14	effective date.	
15		
16	Be It Enacted by the Legislature of the State of Florida:	1:enc
17		
18	Section 1. Subsection (1) of section 914.22, Florida	1.9
19	Statutes, is amended to read:	
20	914.22 Tampering with a witness, victim, or	1.10
21	informant.--	
22	(1) A person who knowingly uses intimidation or	1.12
23	physical force, or threatens another person, or attempts to do	1.13
24	so, or engages in misleading conduct toward another person, or	1.14
25	offers pecuniary benefit or gain to another person, with	
26	intent to cause or induce any person to:	1.15
27	(a) Withhold testimony, or withhold a record,	1.17
28	document, or other object, from an official investigation or	1.18
29	official proceeding;	
30	(b) Alter, destroy, mutilate, or conceal an object	1.20
31	with intent to impair the integrity or availability of the	

1	object for use in an official investigation or official	1.22
2	proceeding;	
3	(c) Evade legal process summoning that person to	1.23
4	appear as a witness, or to produce a record, document, or	1.24
5	other object, in an official investigation or an official	
6	proceeding;	1.25
7	(d) Be absent from an official proceeding to which	1.27
8	such person has been summoned by legal process; or	1:10s
9	(e) Hinder, delay, or prevent the communication to a	1.29
10	law enforcement officer or judge of information relating to	1.30
11	the commission or possible commission of an offense or a	
12	violation of a condition of probation, parole, or release	1.31
13	pending a judicial proceeding; <u>or</u>	
14	<u>(f) Testify untruthfully in an official investigation</u>	1:1us
15	<u>or an official proceeding,</u>	1.33
16		
17	<u>commits is-guilty-of</u> a felony of the third degree, punishable	1.34
18	as provided in s. 775.082, s. 775.083, or s. 775.084.	1.35
19	Section 2. For the purpose of incorporating the	1.36
20	amendment to section 914.22, Florida Statutes, in references	1.37
21	thereto, the subdivisions of Florida Statutes set forth below	
22	are reenacted to read:	1.38
23	914.24 Civil action to restrain harassment of a victim	1.39
24	or witness.--	1.40
25	(1)(a) A circuit court, upon application of the state	1.41
26	attorney, shall issue a temporary restraining order	1.43
27	prohibiting the harassment of a victim or witness in a	
28	criminal case if the court finds, from specific facts shown by	1.44
29	affidavit or by verified complaint, that there are reasonable	1.46
30	grounds to believe that harassment of an identified victim or	
31	witness in a criminal case exists or that such order is	1.47

1	necessary to prevent and restrain an offense under s. 914.22,	
2	other than an offense consisting of misleading conduct, or to	1.48
3	prevent and restrain an offense under s. 914.23.	1.49
4	(2)(a) A circuit court, upon motion of the state	1.50
5	attorney, shall issue a protective order prohibiting the	1.51
6	harassment of a victim or witness in a criminal case if the	
7	court, after a hearing, finds by a preponderance of the	1.52
8	evidence that harassment of an identified victim or witness in	1.53
9	a criminal case exists or that such order is necessary to	
10	prevent and restrain an offense under s. 914.22, other than an	1.54
11	offense consisting of misleading conduct, or to prevent and	
12	restrain an offense under s. 914.23.	1.55
13	772.102 Definitions.--As used in this chapter, the	1.56
14	term:	
15	(1) "Criminal activity" means to commit, to attempt to	1.57
16	commit, to conspire to commit, or to solicit, coerce, or	1.60
17	intimidate another person to commit:	
18	(a) Any crime which is chargeable by indictment or	1.61
19	information under the following provisions:	1.62
20	29. Section 914.22 or s. 914.23, relating to	1.63
21	witnesses, victims, or informants.	1.64
22	895.02 Definitions.--As used in ss. 895.01-895.08, the	1.65
23	term:	
24	(1) "Racketeering activity" means to commit, to	1.66
25	attempt to commit, to conspire to commit, or to solicit,	1.67
26	coerce, or intimidate another person to commit:	
27	(a) Any crime which is chargeable by indictment or	1.69
28	information under the following provisions of the Florida	
29	Statutes:	
30		
31		

1	33. Sections 914.22 and 914.23, relating to tampering	1.71
2	with a witness, victim, or informant, and retaliation against	1.73
3	a witness, victim, or informant.	1.76
4	Section 3. <u>Amendments to sections of the Florida</u>	1.77
5	<u>Statutes enacted by this act shall not operate to repeal or</u>	1.78
6	<u>otherwise negate amendments to the same sections which may</u>	
7	<u>have been previously enacted at a 1992 session of the Florida</u>	1.79
8	<u>Legislature and which are not indicated herein, and full</u>	1.80
9	<u>effect shall be given to each, if that is possible. If</u>	1.81
10	<u>provisions of this act are in direct conflict with amendments</u>	
11	<u>so enacted, the provisions of this act shall control.</u>	1.83
12	Section 4. This act shall take effect upon becoming a	1.84
13	law.	
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger <i>D.D.</i>	Liepshutz <i>W.M.</i>	1. CJ	Favorable
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Witness Tampering

BILL NO. AND SPONSOR: SB 44H by Senator Johnson

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 FLORIDA STATE ARCHIVES
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I. SUMMARY:

A. Present Situation:

In 1990, the Florida Supreme Court held two provisions of the witness tampering statute, s. 914.22, F.S., unconstitutional as a denial of due process. State v. Cohen, 568 So.2d 49 (Fla. 1990). One provision attempted to create an affirmative defense and, instead, impermissibly shifted the burden of proof to the defendant. Id. at 52. The other provision, which required intent to "influence the testimony of any person," was unconstitutionally vague because it failed to give notice as to whether it only meant to penalize attempts to influence untruthful testimony, or whether it also covered truthful testimony. Id. During the 1991 regular session, a revisor's bill repealed these two unconstitutional provisions (Ch. 91-223, Laws of Florida).

Under the current witness tampering statute, knowingly using intimidation or force, or threats, or offering pecuniary benefit to another person with intent to cause or induce a person to: withhold testimony or evidence; conceal or destroy evidence; evade legal process or be absent from an official proceeding; or hinder or prevent information about a violation of law from being communicated to the proper authorities, is a third degree felony.

B. Effect of Proposed Changes:

The bill would cure the constitutional defect found by the Court in Cohen by specifying that conduct meant to influence untruthful testimony, not truthful testimony, in an official proceeding or investigation would be criminalized under the witness tampering statute. The unconstitutional affirmative defense provision would remain repealed under the bill.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

The Attorney General believes that the witness tampering statute was seriously damaged by the Cohen decision and needs to be

addressed by the Legislature as soon as possible. According to Attorney General Butterworth, "... criminals can pay, bribe or extort witnesses to testify untruthfully without fear of prosecution. Although a witness may face perjury charges, the person procuring such testimony does so with impunity."

V. AMENDMENTS:

None.