

STORAGE NAME: h3607s1.cjcl

DATE: March 19, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3607

RELATING TO: Evidence

SPONSOR(S): Representative Dennis

COMPANION BILL(S): SB 1538 by Senator Turner

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

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I. SUMMARY:

CS/HB 3607 amends section 90.612, F.S., which provides for the mode and order of interrogation and presentation of witnesses. CS/HB 3607 under certain circumstances would limit the scope of questioning of a witness under 17 years of age to protect the child against undue harassment or embarrassment. The bill provides that the court shall monitor the form of questions asked of a child to ensure that questions are appropriate for the child's age and understanding.

This bill has no fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Pursuant to s. 90.612, F.S., a judge has authority to exercise reasonable control over the mode and order of evidence. Judges generally afford wide latitude in the questioning of witnesses. An exception to the wide-latitude rule often occurs when a child is a witness where more protection is generally deemed necessary. Presently, there is no codification directing the court to give special care to a child witness under section 90.612, F.S.; however s. 92.55, F.S. as discussed below addresses protection of child witnesses.

Case law also addresses issues regarding child witnesses. It has been held that the trial court has broad discretion to determine whether a child is competent to testify as a witness, Griffin v. State, 526 So. 2d 752 (Fla. 1st DCA 1988), but the decision is one that must be announced on the record and must be supported by findings of fact. Z.P. v. State, 651 So.2d 213 (Fla. 2d DCA 1995).

In the Interest of S.C. v. State, 471 So. 2d 1326, 1328 (Fla. 1st DCA 1985), the court emphasized the need to protect child witnesses. ("The overriding principle in cases of child abuse and neglect is the ultimate welfare and best interest of the child, and parental rights are subject to that principle.")

Section 92.55, F.S., also addresses protection of child witnesses. The statute in pertinent part provides:

- Upon the motion of any party (including parent, guardian, attorney or guardian ad litem) or upon the court's own motion, the court may enter any order necessary to protect a child under the age of 16 who is a victim or witness in any proceeding from severe emotional or mental harm due to the presence of the defendant if the child is required to testify in open court.
- Such orders shall include, but not be limited to: (a) interviewing or the taking of depositions as part of a civil or criminal proceeding; (b) examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding; and (c) the use of testimony taken outside of the courtroom, including use of videotaping or closed circuit television.
- In ruling upon the motion, the court shall consider: the age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems relevant.

The Legislature has further expressed specific concern for the protection of child victims testifying witnesses in enacting s. 90.803(23), F.S. Section 90.803(23), F.S., provides that when circumstances appear reliable, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing any act of child abuse or neglect, or any act of sexual abuse against a child, which otherwise would not be admissible, is admissible in evidence in any civil or criminal proceeding.

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Other statutes enacted to protect child witnesses include s. 92.53, F.S. (providing that the testimony of a victim or witness under the age of 16 may be videotaped) and s. 92.54, F.S. (providing that the testimony of a victim or witness under the age of 16 may be videotaped).

B. EFFECT OF PROPOSED CHANGES:

CS/HB 3607 amends s. 90.612, F.S., to clarify related statutes and case law recognizing that special care must be taken to protect a child witness against undue harassment and embarrassment, as well ensuring that questions are asked in a form appropriate to the age and understanding of the child witness. CS/HB 3607 does not require a motion in order to protect the child witness, as is required in s. 92.55, F.S. The proposed amendment clarifies existing common law, related statutes and practices pertaining to child witnesses.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Minimally. The court has authority to promulgate rules of procedure; however, the bill would clarify rules for witnesses under the age of 17.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Although the court presently has the duty to exercise reasonable control over the mode and order of the interrogation of witnesses, this bill clarifies the judge's responsibilities for witnesses under the age of 17 years.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

None.

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill recognizes the difference in a child witness' ability to communicate and provides those witnesses with protections to enable them to communicate effectively in court proceedings, while also protecting them against undue harassment or embarrassment.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 90.612, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

See Section II, B, above.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

The bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the state constitution.

V. COMMENTS:

Section 90.612 of the Florida Evidence Code directs the mode and order of interrogation and presentation of witnesses. CS/HB 3607 would limit the scope of examining a witness under 17 years of age in order to protect the child against undue harassment or embarrassment. The bill provides that the court shall monitor the form of the questions asked of the child to a form appropriate for the child's age and understanding. Questions of whether a child is competent to be a witness, what protections should be in place to protect the child, and what manner questions are to be formed and how answers should be interpreted frequently arise in case law. CS/HB 3607 clarifies the court's responsibilities in these areas.

AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Civil Justice & Claims adopted one amendment that changed the age of the witness to be protected to be under 17 years of age, rather than limited to under 14 years of age. The committee then made the amended bill into a committee substitute.

VI. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

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