

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS\SB 198

SPONSOR: Senators Klein and Brown-Waite

SUBJECT: Trial Testimony Concerning Sexual Offenses

DATE: January 20, 1999 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|---------------------|
| 1. | <u>Matthews</u> | <u>Johnson</u> | <u>JU</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

This bill amends section 918.16, F.S., to expand the court’s authority to clear the courtroom of all persons, with the exception of certain enumerated individuals, when a victim, irrespective of his or her age or mental capability, is testifying about a sexual offense.

This bill substantially amends section 918.16, F.S.

II. Present Situation:

In a criminal proceeding, an accused has the constitutional right to a public trial. *See* amend. 1, U.S. Const., and art. I, § 16, Fla. Const. Therefore, all criminal proceedings are considered public events and there is a presumption in favor of public access to these proceedings. However, under current Florida law, in either a civil or criminal proceeding, the court must clear all persons from the courtroom, with the exception of certain enumerated persons, when any person testifying concerning a sexual offense is under 16 years of age or has mental retardation¹ as defined under section 393.063(41), F.S. Only the following individuals can then remain in the courtroom: parties to the action, immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and at the request of the victim, victim advocates or witness advocates designated by the state attorney’s office. *See s.* 918.16, F.S. Any person testifying in this context could be a defendant, witness or a victim.

In addition to this statutory provision, the courts impose prerequisites to determine the propriety of a full or partial closure of a civil or criminal proceeding. In a civil proceeding, the courts have considered the following factors: 1) the strong presumption of openness in court proceedings, 2) the public and news media’s standing to challenge any closure order, 3) the necessity of the

¹“Retardation” is defined as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the period from conception to age 18. *See s.* 393.063(44)(Supp.1998).

closure of the court proceedings, 4) the nonavailability of a reasonable alternative, and 5) the burden of the party seeking closure to justify closure. *See Carnegie v. Tedder*, 698 So.2d 1310 (Fla. 2nd DCA 1997), citing to *Baron v. Florida Freedom Newspapers, Inc.*, 531 so.2d 113 (Fla. 1988). In a criminal proceeding, the courts have considered whether: 1) closing the hearing advances an overriding interest that is likely to be prejudiced otherwise; 2) the closure is broader than necessary; 3) reasonable alternatives to closing the proceeding exist; and 4) findings are adequate to support the closure. *See Thornton v. State*, 585 So.2d 1189 (Fla. 2d DCA 1991), citing *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984).

III. Effect of Proposed Changes:

Section 918.16, F.S., is amended to reference the newly created subsection (2) which expands the court's authority to clear a courtroom of certain persons when a victim, irrespective of age or mental capability, is testifying about a sexual offense. Specifically, subsection (2) allows a victim to request that the courtroom be cleared of all persons, with the exception of certain enumerated individuals, during the victim's testimony. The following enumerated persons may remain in the courtroom: parties to the action, immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and at the request of the victim, the victim's advocate or witness advocates designated by the state attorney.

Subsection (1) is also amended to reference properly the statutory redesignation of s.393.063(41), F.S., relating to the definition for "retardation", to s. 393.063(44), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may encourage more victims of sexual offense to come forward and testify in court.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
