

STORAGE NAME: h0119.jo.doc
DATE: January 31, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 119
RELATING TO: Domestic Violence/Character Evidence
SPONSOR(S): Representatives Betancourt and Wiles

TIED BILL(S):

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

- (1) JUDICIAL OVERSIGHT
- (2) SMARTER GOVERNMENT
- (3)
- (4)
- (5)

I. SUMMARY:

This bill amends section 90.404, Florida Statutes, to make prior acts of domestic violence admissible in criminal cases involving domestic violence against family or household members. The evidence of prior acts of domestic violence is still subject to the balancing test of section 90.403, Florida Statutes, and the trial court must instruct the jury on the purpose of the evidence.

The bill takes effect October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | 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. PRESENT SITUATION:

Section 90.404(2)(a), Florida Statutes, codifies the rule regarding admission of evidence of other crimes, wrongs, or acts. Such evidence is admissible when relevant to prove a material fact in issue such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. It is inadmissible when relevant solely to prove bad character or propensity to commit crimes. The rule was stated in Williams v. State, 110 So. 2d 654 (Fla. 1959), and is commonly referred to in Florida as the "Williams Rule."

There is no specific rule in Florida regarding the admission of prior acts of domestic violence in a prosecution for domestic violence offenses. Currently, attempts to admit such acts in criminal trials are analyzed under section 90.404, Florida Statutes.

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 90.404(2)(a), Florida Statutes, to permit the admission of prior acts of domestic violence against family or household members in prosecutions involving domestic violence unless the probative value is outweighed by unfair prejudice. Since this bill specifically states that prior acts of domestic violence are admissible unless the probative value is outweighed by unfair prejudice, confusion of the issues, or misleading the jury, prior acts of domestic violence should be admitted more often under this bill than under the current law. In United States v. Enjady, 134 F.3d 1427, 1430-1431 (10th Cir. 1998), the court explained that Congress intended to "lower the obstacles to admission of propensity evidence in a defined class of cases" when it passed an evidence rule to admit evidence of prior sexual assaults in sexual assault cases. Similarly, this bill could be read to "lower the obstacles" to admission of prior acts of domestic violence in domestic violence cases.

The bill's special rule admitting prior acts of domestic violence is limited to situations where the victim or victims are family or household members. The bill defines "family or household members" by reference to section 741.28(2), Florida Statutes. The statute defines "family or household member" as:

spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and

persons who have a child in common regardless of whether they have been married or have resided together at any time.

Section 741.28(1), Florida Statutes, defines domestic violence:

(1) "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

However, other statutory definitions of "domestic violence" omit stalking, aggravated stalking, kidnapping, and false imprisonment from the list of crimes included as "domestic violence." See e.g. s. 25.385(2)(a), F.S.; s. 39.902, F.S. Other statutes relating to criminal law and procedure use the definition of "domestic violence" in section 741.28(1), Florida Statutes. See e.g. ss. 787.03, F.S. (relating to interference with child custody); 901.15, F.S. (relating to arrests); 907.041, F.S. (relating to pretrial release); 921.0014, F.S. (relating to sentencing). The bill does not define nor reference a particular definition of the term "domestic violence."

The bill states that evidence of prior acts of domestic violence is only admitted if the probative value of the evidence is not outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. This is a restatement of the "balancing test" in section 90.403, Florida Statutes. Federal courts have upheld federal rules of evidence admitting specific types of prior bad acts against constitutional challenge, because the "balancing test" is still used to ensure a defendant is not convicted based solely on his or her prior crimes. See, Enjady, 134 F.3d at 1434 ("Although the district court must recognize the congressional judgment that Rule 413 evidence is 'normally' to be admitted, it also must engage in Rule 403 balancing."); United States v. Castillo, 140 F.3d 874, 882-883 (10th Cir. 1998)(upholding federal rule admitting prior acts of child molestation in child molestation cases and noting the protection provided by the balancing test).

Further, the bill provides that the court shall instruct the jury on the limited purpose for which the evidence is admitted. The current Williams rule instruction reads:

The evidence you are about to receive concerning evidence of other crimes allegedly committed by the defendant will be considered by you for the limited purpose of proving [motive] [opportunity] [intent] [preparation] [plan] [knowledge] [identity] [the absence of mistake or accident] on the part of the defendant and you shall consider it only as it relates to those issues.

Fla.Std.Jur.Instr. (Crim.) 3.08.

The bill would require this instruction, or something similar, in cases where prior domestic violence incidents are admitted.

Colorado, Alaska, and California have provisions similar to this bill in their evidence codes.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

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

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

See Section II.C. - Effects of Proposed Changes.

B. RULE-MAKING AUTHORITY:

N/A

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C. OTHER COMMENTS:

The bill does not define nor reference a particular definition of the term "domestic violence." Since the definitions in different portions of the statutes vary, this may result in litigation over exactly what constitutes "domestic violence" cases.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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