

By the Committee on Children and Families; and Senator Geller

300-2055-03

1 A bill to be entitled
 2 An act relating to parent-child privilege;
 3 creating s. 90.5045, F.S.; creating a
 4 parent-child privilege to prevent disclosure of
 5 communications that were intended to be made in
 6 confidence; defining the term "parent";
 7 providing proceedings in which the privilege
 8 does not exist; providing for waiver of the
 9 privilege; requiring that a guardian ad litem
 10 be appointed to represent a minor child prior
 11 to the court approving a waiver of the
 12 privilege; providing an effective date.

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 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Section 90.5045, Florida Statutes, is
 17 created to read:

18 90.5045 Parent-child privilege.--

19 (1) A child and the parent of that child have a
 20 privilege, because of the family relationship, to refuse to
 21 disclose, and to prevent another from disclosing,
 22 communications that were intended to be made in confidence
 23 between them.

24 (2) The privilege may be claimed by either the child
 25 or the parent, or by the guardian or conservator of the child
 26 or parent. The authority of a child or the child's parent, or
 27 guardian or conservator of the child or parent, to claim the
 28 privilege is presumed in the absence of contrary evidence.

29 (3) As used in this section, the term "parent" means a
 30 woman who gives birth to a child or a man whose consent to the
 31 adoption of the child would be required under s. 63.062(1). If

1 a child has been legally adopted, the term "parent" means the
2 adoptive mother or father of the child. The term does not
3 include an individual whose parental relationship to the child
4 has been legally terminated and does not include an alleged or
5 prospective parent, unless the parental status falls within
6 the terms of s. 39.503(1) or s. 63.062(1).

7 (4) There is no privilege under this section:

8 (a) In any proceeding brought by or on behalf of the
9 child against the child's parent.

10 (b) In any proceeding brought by or on behalf of the
11 child's parent against the child.

12 (c) In a criminal proceeding in which the child is
13 charged with a crime committed at any time against the person
14 or property of the child's parent, or the person or property
15 of any other child of the child's parent.

16 (d) In a criminal proceeding in which the child's
17 parent is charged with a crime committed at any time against
18 the person or property of the child, or the person or property
19 of a child of the child.

20 (e) In any criminal or other governmental
21 investigation involving allegations of abuse, neglect,
22 abandonment, or nonsupport of a child by a parent of that
23 child.

24 (f) In any criminal or other governmental
25 investigation involving allegations of sexual or physical
26 abuse of a parent by a child of that parent.

27 (g) In any proceeding governed by the Florida Family
28 Law Rules of Procedure or the Florida Juvenile Rules of
29 Procedure.

30 (5) This privilege may be waived if either the parent
31 or the child expressly consents to the disclosure of the

1 communications. However, if the child has not reached majority
2 or been otherwise emancipated, the child's stated consent is
3 invalid or ineffective unless it is approved by a court of
4 competent jurisdiction. The court may only approve such
5 child's consent after appointing a guardian ad litem to
6 represent the child and after the guardian ad litem makes a
7 recommendation to the court that the waiver of the privilege
8 would be in the best interests of the child.

9 Section 2. This act shall take effect July 1, 2003.

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 Senate Bill 90

14
15 Creates a definition of "parent" for the purposes of the
16 parent-child privilege section.

17 Provides that the waiver of the parent-child privilege
18 requires consent by the parent or the child in lieu of consent
19 from both the parent and the child.

20 Requires a recommendation by an appointed guardian ad litem
21 that the child's waiver of the parent-child privilege is in
22 the child's best interest prior to court approval in those
23 scenarios in which the child is under the age of majority or
24 has not been otherwise emancipated.

25 Removes the limitation to sexual abuse or physical abuse from
26 the governmental investigation to which the parent-child
27 privileged communication does not apply and provides for the
28 exclusion across all situations of abuse, neglect, or
29 abandonment under ch. 39, F.S.

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