

By the Committee on Judiciary; and Senator Geller

590-1896-07

1    A bill to be entitled  
2    An act relating to the 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    prescribing 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's approving the child's waiver of  
12    the 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) Because of the family relationship that exists  
20 between parents and their children, there is a privilege to  
21 refuse to 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 of  
15 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 Rules of Juvenile  
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 the age  
2 of majority or been otherwise emancipated, the child's stated  
3 consent is invalid or ineffective unless it is approved by a  
4 court of competent jurisdiction. The court may approve such  
5 child's consent only 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, 2007.

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11                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
12                   COMMITTEE SUBSTITUTE FOR  
13                   SB 154

14 The committee substitute differs from the underlying bill in  
15 that it no longer limits the application of the parent-child  
16 privilege based on the age of a parent or child.  
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