

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 383
SPONSOR(S): Thompson

Discovery Depositions

TIED BILLS:

IDEN./SIM. BILLS: SB 2154

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	5 Y, 3 N	Padgett	Kramer
2)	Criminal & Civil Justice Policy Council	8 Y, 5 N	Padgett	Havlicak
3)	Full Appropriations Council on General Government & Health Care			
4)				
5)				

SUMMARY ANALYSIS

The bill provides that a discovery deposition cannot be taken if a defendant is charged with a third degree felony, a misdemeanor, or a criminal traffic offense, when all other discovery provided by law has been complied with, unless good cause can be shown to the trial court.

The bill also repeals Rule 3.220(h)(1)(D), Florida Rules of Criminal Procedure, to the extent that it is inconsistent with the bill. The bill will take effect October 1, 2009 if the bill is passed by a 2/3 vote of the membership of each house of the Legislature.

This bill appears to have a positive recurring impact of approximately \$400,000 annually on state expenditures due to savings in court reporter fees. This bill may have a fiscal impact on other state expenditures and local government expenditures. See Section II. Fiscal Analysis & Economic Impact Statement for additional information.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Discovery is the compulsory disclosure of information in a pending court case at a party's request.¹ The primary discovery devices are interrogatories, depositions, requests for admissions, and requests for production.² A deposition is a witness' out of court testimony, under oath, that is reduced to writing.³

Court rules provide that discovery depositions may be taken in criminal cases in which the defendant is charged with a felony.⁴ The Florida Rules of Criminal Procedure provide that discovery depositions may be taken at any time after the filing of the charging document upon oral examination of any person authorized by the rules.⁵ Rule 3.220(h)(1)(D), Florida Rules of Criminal Procedure, provides that

No deposition shall be taken in a case in which the defendant is charged only with a misdemeanor or a criminal traffic offense when all other discovery provided by this rule has been complied with unless good cause can be shown to the trial court. In determining whether to allow a deposition, the court should consider the consequences to the defendant, the complexity of the witness' testimony (e.g., experts), and the other opportunities available to the defendant to discover the information sought by deposition. However, this prohibition against the taking of depositions shall not be applicable if following the furnishing of discovery by the defendant the state then takes the statement of a listed defense witness pursuant to section 27.04, Florida Statutes.

Section 27.04, F.S., provides that

The state attorney shall have summoned all witnesses required on behalf of the state; and he or she is allowed the process of his or her court to summon witnesses from

¹ Rule 3.220, Fla. Rules of Criminal Procedure. Under Florida Rules of Criminal Procedure, the defendant has the option to participate in the discovery process. If the defendant chooses to participate in the discovery process, the state attorney must provide discovery information and the defendant must provide reciprocal discovery. If the defendant elects not to participate in the discovery process, the state attorney is not required to participate in the discovery process.

² Garner, Bryan. Black's Law Dictionary, Second Pocket Edition, (2001).

³ Id.

⁴ Rule 3.220(h)(1)(D), Fla. Rules of Crim. Proc.

⁵ Rule 3.220(h)(1), Fla. Rules of Crim. Proc.

throughout the state to appear before the state attorney in or out of term time at such convenient places in the state attorney's judicial circuit and at such convenient times as may be designated in the summons, to testify before him or her as to any violation of the law upon which they may be interrogated, and he or she is empowered to administer oaths to all witnesses summoned to testify by the process of his or her court or who may voluntarily appear before the state attorney to testify as to any violation or violations of the law.

Effect of Proposed Changes

This bill provides that when all other discovery requirements have been complied with, a deposition may not be taken in cases where a defendant is charged with a third degree felony, a misdemeanor, or a criminal traffic offense unless good cause can be shown to the trial court. The judge must consider the following factors in making a determination of good cause:

- consequences to the defendant,
- complexity of the issues involved,
- complexity of the witness' testimony, and
- other opportunities available to the defendant to discover the information sought by the discovery.

This bill provides an exception to the prohibition against a discovery deposition when, following the furnishing of discovery by the defendant, the state takes the statement of a listed defense witness pursuant to s. 27.04, F.S.

This bill repeals Rule 3.220(h)(1)(D), Florida Rules of Criminal Procedure, to the extent that it is inconsistent with this bill, if the bill is passed by a two-thirds vote of the membership of each house⁶.

B. SECTION DIRECTORY:

Section 1: Creates s. 914.29, F.S., relating to discovery depositions; limitations.

Section 2: Repeals Rule 3.220(h)(1)(D), Florida Rules of Criminal Procedure, to extent it is inconsistent with this bill.

Section 3: Provides an effective date of October 1, 2009 for section 1 of the bill, and provides that section 2 of the bill will take effect only if enacted by a two-thirds vote of the membership of each house of the Legislature.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appears to have a positive recurring impact of approximately \$400,000 annually on state expenditures. The Justice Administrative Commission reports that it expended \$378,050.69 in FY 2007-2008 for court reporter costs and fees in third degree felony cases.

⁶ Art. V, s. 2(a), Fla. Const.

There may be additional savings in terms of time currently spent by prosecutors and public defenders in depositions, but that may be offset by additional time necessary for conducting investigations and attending court hearings to grant motions for good cause. The net effect on such payroll costs cannot be qualified.

Law enforcement officers often receive overtime pay for attending depositions. Assuming the bill reduces the number of depositions law enforcement officers are required to attend, there may be a savings in overtime pay.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Law enforcement officers often receive overtime pay for attending depositions. Assuming the bill reduces the number of depositions law enforcement officers are required to attend, there may be a savings in overtime pay.

The bill provides depositions in third degree felony cases are no longer automatic, but may be taken if criminal defense attorneys show good cause. Typically, a showing of good cause would require the defense attorney to file a motion and the trial court to conduct a hearing on the motion. The increased number of motions and hearings could have an impact on court resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Court reporters may see reduced income as the number of depositions is decreased.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Constitution provides that “[t]he supreme court shall adopt rules for the practice and procedure in all courts”.⁷ The separation of powers provision of the state constitution prohibits one branch of government from exercising a power given to another branch.⁸ According to the constitution, a rule of court “may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.” The constitution does not grant the Legislature the authority to replace the repealed rule with a legislative enactment. The constitution also does not preclude the Supreme Court from reenacting a rule that is similar or identical to one that the Legislature has repealed.

Florida courts generally protect their rulemaking power by striking down laws that they determine are “procedural” in nature. In January of 2000, the Legislature passed the Death Penalty Reform Act

⁷ Art. V, Section 2(a), Fla. Const.

⁸ Art. II, Section 3, Fla. Const.

(DPRA) of 2000 in order to reduce the amount of time spent in litigation of capital cases. The bill advanced the start of the postconviction appeals process in capital cases to have it begin while the case was on direct appeal. The DPRA also imposed time limitations at key points of the postconviction process, limited successive postconviction motions and prohibited amending a postconviction motion after the expiration of the time limitation. The DPRA repealed the rules of criminal procedure applying to capital postconviction motions. In *Allen v. Butterwoth*,⁹ the Florida Supreme Court held that the DPRA was an “unconstitutional encroachment” on the Court’s “exclusive power to ‘adopt rules for the practice and procedure in all courts’.”¹⁰

It is possible that the statute created by this bill will be challenged on the grounds that it violates the separation of powers provision of the state constitution by dealing with procedural matters that are the province of the court. In ruling on the constitutionality of a statutory provision, the court determines whether the statute deals with “substantive” or “procedural” matters.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

⁹ *Allen v. Butterwoth*, 756 So.2d 52 (Fla. 2000)

¹⁰ *Id.* at 54.