

1                                   A bill to be entitled  
 2           An act relating to depositions in juvenile proceedings;  
 3           creating s. 985.326, F.S.; providing for time and location  
 4           of deposition; providing procedures; providing for  
 5           depositions of different categories of witnesses;  
 6           providing that no disposition may be taken in certain  
 7           cases; specifying factors to be considered in allowing a  
 8           deposition; allowing use of deposition testimony for  
 9           impeachment; allowing use of unintroduced portions of a  
 10          deposition in certain circumstances; authorizing sanctions  
 11          for disobedience of a subpoena; providing circumstances  
 12          under which the presence of a child may be required for a  
 13          deposition; authorizing the taking of statements by law  
 14          enforcement officers by telephone in certain  
 15          circumstances; providing for use of such statements;  
 16          requiring video recording of depositions of children under  
 17          16 years of age unless otherwise ordered; providing for  
 18          video recording of other witnesses depositions; providing  
 19          an effective date.

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

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 23           Section 1.   Section 985.326, Florida Statutes, is created  
 24   to read:

25           985.326   Depositions.—  
 26           (1)   TIME AND LOCATION.—

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27 (a) At any time after the filing of the petition alleging  
28 a child to be delinquent, any party may take the deposition upon  
29 oral examination of any person authorized by this section.

30 (b) Depositions of witnesses residing in the county in  
31 which the adjudicatory hearing is to take place shall be taken  
32 in the building in which the adjudicatory hearing is to be held,  
33 another location agreed on by the parties, or a location  
34 designated by the court. Depositions of witnesses residing  
35 outside the county in which the adjudicatory hearing is to take  
36 place shall take place in a court reporter's office in the  
37 county and state in which the witness resides, another location  
38 agreed to by the parties, or a location designated by the court.

39 (2) PROCEDURE.—

40 (a) The party taking the deposition shall give reasonable  
41 written notice to each other party and shall make a good faith  
42 effort to coordinate the date, time, and location of the  
43 deposition with other parties and the witness to be deposed to  
44 accommodate their schedules. The notice shall state the time and  
45 the location of the deposition and the name of each person to be  
46 examined, and include a certificate of counsel that a good faith  
47 effort was made to coordinate the deposition schedule.

48 (b) Upon application, the court or the clerk of the court  
49 may issue subpoenas for the persons whose depositions are to be  
50 taken.

51 (c) After notice to the parties, the court, for good cause  
52 shown, may change the time or location of the deposition.

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53        (d) In any case, a person may not be deposed more than  
54 once except by consent of the parties or by order of the court  
55 issued on good cause shown.

56        (e) Except as otherwise provided by this section, the  
57 procedure for taking the deposition, including the scope of the  
58 examination and the issuance of a subpoena, other than a  
59 subpoena duces tecum, for deposition by an attorney of record in  
60 the action shall be the same as that provided in the Florida  
61 Rules of Civil Procedure.

62        (f) The child, only with leave of court, may take the  
63 deposition of any witness listed by the petitioner as a Category  
64 A witness, as defined in Rule 8.060, Florida Rules of Juvenile  
65 Procedure, or listed by a codefendant as a witness to be called  
66 at a joint hearing. After receipt by the child of the discovery  
67 exhibit, the child, without leave of court, may take the  
68 deposition of any unlisted witness who may have information  
69 relevant to the petition's allegations. The petitioner, only  
70 with leave of court, may take the deposition of any witness  
71 listed by the child to be called at a hearing.

72        (g) No party may take the deposition of a witness listed  
73 by the petitioner as a Category B witness, as defined in Rule  
74 8.060, Florida Rules of Juvenile Procedure, except upon leave of  
75 court with good cause shown.

76        (h) A witness listed by the petitioner as a Category C  
77 witness, as defined in Rule 8.060, Florida Rules of Juvenile  
78 Procedure, is not subject to deposition unless the court  
79 determines that the witness should be listed in another  
80 category.

81        (i) A deposition may not be taken in a case in which a  
82 petition has been filed alleging that the child committed only a  
83 misdemeanor or a criminal traffic offense when all other  
84 discovery provided by this section has been complied with. In  
85 determining whether to allow a deposition, the court should  
86 consider the consequences to the child, the complexity of the  
87 issues involved, the complexity of the witness's testimony, and  
88 the other opportunities available to the child to discover the  
89 information sought by deposition.

90        (3) USE OF DEPOSITION.—Any deposition taken under this  
91 section may be used at any hearing covered by this chapter by  
92 any party for the purpose of impeaching the testimony of the  
93 deponent as a witness.

94        (4) INTRODUCTION OF PART OF DEPOSITION.—If only part of a  
95 deposition is offered in evidence by a party, an adverse party  
96 may require the introduction of any other part that in fairness  
97 should be considered with the part introduced, and any party may  
98 introduce any other parts.

99        (5) SANCTIONS.—A witness who refuses to obey a duly served  
100 subpoena for the taking of a deposition may be adjudged in  
101 contempt of the court from which the subpoena issued.

102        (6) PHYSICAL PRESENCE OF CHILD.—The child shall not be  
103 physically present at a deposition except upon stipulation of  
104 the parties or as provided by this section. The court may order  
105 the physical presence of the child upon a showing of good cause.  
106 In ruling, the court may consider the following:

107        (a) The need for the physical presence of the child to  
108 obtain effective discovery.

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109        (b) The intimidating effect of the child's presence on the  
110 witness, if any.

111        (c) Any cost or inconvenience which may result.

112        (d) Any alternative electronic or audio-visual means  
113 available to protect the child's ability to participate in  
114 discovery without the child's physical presence.

115        (7) STATEMENTS OF LAW ENFORCEMENT OFFICERS.—Upon  
116 stipulation of the parties and the consent of the witness, the  
117 statement of a law enforcement officer may be taken by telephone  
118 in lieu of deposition of the officer. In such case, the officer  
119 need not be under oath. The statement, however, shall be  
120 recorded and may be used for impeachment at trial as a prior  
121 inconsistent statement under s. 90.614.

122        (8) DEPOSITIONS OF LAW ENFORCEMENT OFFICERS.—Subject to  
123 the general provisions of this section, law enforcement officers  
124 shall appear for deposition, without subpoena, upon written  
125 notice of taking deposition delivered at the address designated  
126 by the law enforcement agency or department or, if an address  
127 has not been designated, to the address of the law enforcement  
128 agency or department, at least 5 days before the date of the  
129 deposition. Law enforcement officers who fail to appear for  
130 deposition after being served notice are subject to contempt  
131 proceedings.

132        (9) VIDEO RECORDED DEPOSITIONS.—Video recordings of  
133 depositions of children under the age of 16 shall be made upon  
134 demand of any party unless otherwise ordered by the court. The  
135 court may order a video recording of a deposition or taking of a  
136 deposition of a witness with fragile emotional strength to be

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137 | shown in the presence of the trial judge or a special  
138 | magistrate.

139 |       Section 2. This act shall take effect July 1, 2011.