

STORAGE NAME: h1107a.flc
DATE: March 22, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 1107
RELATING TO: Underage Witness Protection
SPONSOR(S): Representative Wiles
TIED BILL(S):

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

- (1) FAMILY LAW AND CHILDREN YEAS 7 NAYS 0
 - (2) JUDICIARY
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill amends s. 90.612, F.S., relating to the mode and order of interrogation and presentation of witnesses. The bill requires the judge to take special care to protect a witness under age 14 from undue harassment or embarrassment. The bill also requires the judge to restrict unnecessary, repetitious questioning. The judge would be required to monitor the form of questions asked of a child, to ensure that the questions are posed in a manner appropriate to the age and understanding of the child. Upon objection from a party, the court may prohibit the asking of a question that is in a form that cannot reasonably be understood by a person of the age and understanding of the witness. The bill provides an effective date of July 1, 2000.

There is no fiscal impact associated with this bill.

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:

Presently, there is no Florida statute or case law that expressly requires the court to protect child witnesses from undue harassment, embarrassment, or repetitive questioning. Likewise, there is no current statute or case law which expressly requires the court to ensure that questions of a witness under 14 are posed in a form that is appropriate to the age and understanding of the witness. However, as with any witness regardless of their age, the court possesses the inherent power to do all things that are reasonable and necessary for the administration of justice, including the ability to protect witnesses. See *State v. Ford*, 626 So.2d 1338, 1345 (Fla. 1993).

Additionally, the Florida Supreme Court, quoting the United States Supreme Court, has stated that "trial judges retain wide latitude...to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." (citation omitted), *Moore v. State*, 701 So.2d 545, 549 (Fla. 1997).

The Legislature has enacted several statutes concerning the protection of testifying child witnesses. These statutes, ss. 92.53 and 92.54, F.S., provide safeguards for children under 16 who must testify in civil or criminal proceedings where the child, if required to testify in open court, would suffer at least moderate emotional or mental harm due to the presence of the defendant. These sections allow the testimony of such children to be videotaped or broadcast through closed circuit television outside the physical presence of the defendant. Case law construing the implementation of these statutes has arisen in criminal cases where the child witness has been a victim of sexual abuse or a witness to a violent crime. *Ford*, 626 So.2d at 1345; *Maryland v. Craig*, 497 U.S. 836 (1990). The Florida Supreme Court in *Ford* held that a criminal defendant's constitutional right to confront accusatorial witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy, such as protecting a child witness from the trauma of testifying in the presence of a defendant accused of killing the child's parent. *Ford*, at 1345.

Additionally, s. 92.55, F.S., provides special protections for child witnesses or persons with mental retardation. Upon motion of any party, parent, guardian, attorney or guardian ad litem for a child under 16 or person with mental retardation, or upon its own motion, the court may enter any order necessary to protect the witness in any judicial proceeding or

other official proceeding from severe emotional or mental harm due to the presence of the defendant, if the witness is required to testify in open court. Section 92.55 (4), F.S., provides that the court may enter orders limiting the number of times that a child witness may be interviewed, prohibiting depositions, requiring submission of written questions prior to the examination, and setting the conditions and place for interviewing the witness.

C. EFFECT OF PROPOSED CHANGES:

This bill would expressly require courts to take special care to protect a witness under the age of 14 from undue harassment or embarrassment. It would also require the court to restrict the unnecessary repetition of questions. The bill also requires the court to ensure that questions are stated in a form that is appropriate to the age and understanding of the witness. These provisions do not require a party to file a motion or pose an objection prior to their implementation.

The bill also expressly provides that, on objection by a party, the court may forbid the asking of a question that is in a form that cannot reasonably be understood by a person of the age and understanding of the witness.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 90.612, F.S., relating to mode and order of interrogation and presentation. This section provides that the judge must take special care to protect witnesses under age 14 from undue harassment or embarrassment and to restrict the unnecessary repetition of questions. The court is also required to take special care to ensure that the questions are stated in a form that is appropriate to the age and understanding of the witness. This section provides that the court may, in the interests of justice, on objection by a party, forbid the asking of a question that is in a form that cannot reasonably be understood by a person of the age and understanding of the witness.

Section 2. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state sales tax shared with municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

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