
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 21, 1998

Revised: _____

Subject: Florida Evidence Code

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Harkins	Moody	JU	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

The bill amends section 90.612, Florida Statutes, which provides for the mode and order of interrogation and presentation of witnesses. Under certain circumstances, the bill would limit the scope of questioning of a witness under 14 years of age to protect the child against undue harassment or embarrassment. The bill provides that the court shall monitor the form of questions asked of a child to ensure that questions are appropriate for the child's age and understanding. The bill does not apply to a witness under 14 years of age who is a criminal defendant being tried as an adult.

This bill substantially amends section 90.612 of the Florida Statutes.

II. Present Situation:

A judge has authority to exercise reasonable control over the mode and order of evidence. Judges generally afford wide latitude in the questioning of witnesses. s. 90.612, F.S. An exception to the wide-latitude rule often occurs when a child is a witness and more protection is generally deemed necessary. Presently, there is no codification directing the court to give special care to a child witness under s. 90.612, F.S., however, there are several statutes that address child witnesses.

Section 92.55, F.S., also addresses protection of child witnesses. The statute in pertinent part provides:

- Upon the motion of any party (including parent, guardian, attorney, or guardian ad litem) or upon the court's own motion, the court may enter any order necessary to protect a child under the age of 16 who is a victim or witness in any proceeding from severe emotional or mental harm due to the presence of the defendant if the child is required to testify in open court.

- Such orders shall include, but not be limited to: (a) interviewing or the taking of depositions as part of a civil or criminal proceeding; (b) examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding; and (c) the use of testimony taken outside of the courtroom, including use of videotaping or closed circuit television.
- In ruling upon the motion, the court shall consider: the age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems relevant.
- The Legislature has further expressed specific concern for the protection of child victims as testifying witnesses in enacting s. 90.803(23), F.S. Section 90.803(23), F.S., provides that when circumstances appear reliable, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 years or less describing any act of child abuse or neglect, or any act of sexual abuse against a child, which otherwise would not be admissible, is admissible in evidence in any civil or criminal proceeding.

Other statutes enacted to protect child witnesses include s. 92.53, F.S. (providing that the testimony of a victim or witness under the age of 16 may be videotaped) and s. 92.54, F.S. (providing that the testimony of a victim or witness under the age of 16 may be videotaped).

Case law also addresses issues regarding child witnesses. It has been held that the trial court has broad discretion to determine whether a child is competent to testify as a witness, *Griffin v. State*, 526 So. 2d 752 (Fla. 1st DCA 1988), but the decision is one that must be announced on the record and must be supported by findings of fact. *Z.P. v. State*, 651 So.2d 213 (Fla. 2d DCA 1995).

In *Interest of S.C. v. State*, 471 So. 2d 1326, 1328 (Fla. 1st DCA 1985), the court emphasized the need to protect child witnesses stating that “[t]he overriding principle in cases of child abuse and neglect is the ultimate welfare and best interest of the child, and parental rights are subject to that principle.”

III. Effect of Proposed Changes:

To the extent that courts do not already do so, this bill would require courts to take special measures to protect children during examination. It would also assure that children are asked questions in a manner within their scope of understanding. This could assure more accurate answers from children.

Specifically, the court must:

- Take special care to assure that children are not unnecessarily embarrassed or harassed; and
- Take care to assure that questions are stated in a manner suitable to the child's level of understanding.

If necessary, for good cause, the court may prohibit the asking of a question not reasonably likely to be understood by a child. The bill does not apply to a witness under 14 years of age who is a criminal defendant being tried as an adult.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
