

STORAGE NAME: h0423s1.cp

DATE: March 9, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: CS/HB 423

RELATING TO: Trial Testimony/Sexual Offenses.

SPONSOR(S): Committee on Crime & Punishment, Representative Argenziano

COMPANION BILL(S): CS/SB 198(s)

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

- (1) JUDICIARY YEAS 8 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

The committee substitute amends section 918.16, F.S., requiring a trial judge to close the courtroom during the testimony of a victim of a sex offense in any criminal or civil trial. The court may not close the courtroom to members of the media, parties to the case, their attorneys, secretaries, officers of the court, and families or guardians of the victim.

The committee substitute has an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 918.16, F.S., provides that in cases where a person under the age of 16 or any person with mental retardation as defined in s. 393.063 (41), F.S., testifies regarding any sex offense, the trial court shall clear the courtroom of all persons other than the jury, the family or guardian of the victim, the parties, counsel for the parties and any secretaries, court officers, and the media. This law applies in criminal and civil cases. The statute allows a victim to request the court to allow a victim or witness advocate who is designated by the state attorney to remain in the closed courtroom during the testimony.

Constitutional Right to Public Trial in Criminal Cases

Article I, section 16 of the Florida Constitution and the Sixth Amendment to the U.S. Constitution confer upon an accused in a criminal case the right to a public trial. The presumption of openness created by the Florida Constitution is not absolute, and Florida courts will allow the limited closing of court rooms under specific circumstances. Pritchett v. State, 566 So. 2d 6 (Fla. 2d DCA 1990). In Pritchett, the State requested that the courtroom be cleared while the minor victim testified. The defendant objected on the ground that clearing the courtroom would deny him the right to a public trial. The trial court ordered that the courtroom be cleared of all spectators during the minor victim's testimony. On appeal, the Second District found that section 918.16 was not unconstitutional on its face but found that the application of the statute was unconstitutional in the defendant's case because the trial court failed to make any findings justifying the closure of the courtroom. According to the court, while the right of an accused to a public trial is not absolute, "the circumstances allowing closure are limited." Id. Citing Waller v. Georgia, 467 U.S. 39, 104 S.Ct. 2210 (1984), a case in which the United States Supreme Court held that the trial court erred in clearing the courtroom of the public and press for a suppression hearing, the Florida Supreme Court held that there are four prerequisites that must be satisfied before the presumption of openness can be overcome as follows:

- (1) The party seeking to close a hearing must advance an overriding interest that is likely to be prejudiced by the open court.
- (2) The closure must be no broader than necessary to protect that interest.
- (3) The trial court must consider reasonable alternatives to closure
- (4) The court must make findings adequate to support the closure.

See also, Thornton v. State, 585 So.2d 1189 (Fla. 2nd DCA 1991).

However, in Douglas v. State, 328 So.2d 18 (Fla. 1976), when the wife of the murdered victim who had herself been raped testified at trial, the judge ordered the courtroom cleared of all persons except necessary court personnel, the press, members of the families of the defendant, the victim and the witness. The State argued that the nature of the testimony was so embarrassing that there was "no reason that anybody should hear it unless necessary." On appeal, the Florida Supreme Court held that there had been no violation of the defendant's right to a public trial because the "limitation upon courtroom spectators did not render the matter a star-chamber proceeding and there has been no prejudice shown that resulted from the limitation." Id.

Closing Courtroom in Civil Case

Although there are not any reported decisions applying section 918.16 in a civil case, appellate courts have provided a list of elements that a trial court must consider in deciding whether to close a **civil trial**:

- (1) the presumption that the proceeding should be open
- (2) that the burden is on the party seeking closure and that the public and news media shall have standing to challenge a request for closure;

- (3) that the closure be allowed only to comply with established public policy, including the protection of the rights of the innocent third parties;
- (4) that no reasonable alternative is available to accomplish the desired result and that the closure be the least restrictive means of achieving that result; and (5) that the presumption of openness continues through the appellate process with the burden placed on the party seeking closure to justify the need.

Carnegie v. Tedder, 698 So. 2d 1310, 1312 (Fla. 2d DCA 1997)(citing Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113, 118-119 (Fla. 1988)). In these cases, the trial court had closed the courtroom to members of the press.

B. EFFECT OF PROPOSED CHANGES:

The committee substitute makes a technical amendment to section 918.16 by changing the number of the statute referenced regarding mental retardation.

The committee substitute adds a new subsection (2), creating a right to closure for persons who would not otherwise meet the requirements of s. 918.16(1), F.S. The committee substitute allows a judge to close the courtroom during the testimony of any victim upon the request of the victim. Thus, even if the victim is not under the age of 16 and is not mentally retarded, the judge must close the courtroom during the victim's testimony, if the victim requests. The jury, the parties, the family of the parties, counsel for the parties and any secretaries, court officers, and the media would be permitted to remain in the courtroom.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

The committee substitute may be read to create an entitlement to the closure of a courtroom during certain testimony regarding a sex offense.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The committee substitute would limit public access to certain judicial proceedings and limit the right of persons accused of sex offenses to have public trials.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 918.16.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that judge should close courtroom upon request of victim when victim testifies. Provides exceptions from closure for certain enumerated persons, including the media.

Section 2. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

This committee substitute should have no fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The committee substitute does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce anyone's revenue raising authority.

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

The committee substitute does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A trial court may have more difficulty clearing a courtroom for a victim who is older than 16 and not mentally retarded without violating a defendant's right to a public trial. The interest in protecting a person who is older than 16 and is not mentally retarded will not be as great as that of a younger or mentally retarded person. On the other hand, in Pritchett and Thornton, the cases in which the Second District found that the court had violated the defendant's right to a public trial, the trial court had cleared the courtroom of all spectators including the press. It is probably less likely that a defendant would be able to successfully claim on appeal that his right to a public trial was violated if a judge follows the provisions of this committee substitute and allows the media to remain in the courtroom.

While the committee substitute provides that a victim will be permitted to request that a victim's advocate remain in the closed courtroom, it is possible that a person testifying about a sexual offense who is not a victim, including for example, a witness, will not be allowed to request that a victim or witness advocate remain in the courtroom.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted one amendment which traveled with the bill. The amendment restored the right provided by the current statute for a victim who is under the age of 16 or mentally retarded to request that a victim or witness advocate designated by the state attorney be allowed to remain in the closed courtroom during the victim's testimony regarding a sexual offense.

On March 9, 1999, Representative Argenziano offered an amendment at the Committee on Crime and Punishment meeting. In response to concern that a victim may not be considered a "party" to the proceedings in a criminal case, the amendment is intended to insure that a victim's family would be entitled to remain in the courtroom during the victim's testimony. The bill with the amendments was made a committee substitute.

VII. SIGNATURES:

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