

STORAGE NAME: h0423a.jud

DATE: February 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 423

RELATING TO: Trial Testimony/Sexual Offenses.

SPONSOR(S): Rep. Argenziano

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

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

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

I. SUMMARY:

The bill amends section 918.16, F.S., requiring a trial judge to close the courtroom during the testimony of a victim of a sex offense, at the request of that victim, in any criminal or civil trial. The court may not close the trial to members of the media, parties to the case, their attorneys, secretaries, officers of the court, and families or guardians of the victim. The bill also eliminates the right of a minor under the age of 16 or a person who is mentally retarded to request that victim or witness advocates designated by the state attorney remain in the closed courtroom during that person's testimony regarding a sexual offense.

The bill 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 law presently allows the 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.

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 conclusive, 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 order to close the courtroom during a **criminal trial**, the trial court must consider the following factors:

(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; and (4) the court must make findings adequate to support the closure. *Pritchett v. State*, 566 So. 2d 6, 7 (Fla. 2d DCA 1990) (citing *Waller v. Georgia*, 467 U.S. 39, 47 (1984)).

The elements that a court must consider in deciding whether to close a **civil trial** include:

(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)).

Section 918.16, F.S., was declared constitutional in Florida in *Pritchett v. State*, 566 So. 2d 6 (Fla. 2d DCA 1990) (citing *Robertson v. State*, 64 Fla. 437, 60 So. 118 (Fla. 1912) and *Douglas v. State*, 328 So. 2d 18 (Fla. 1976)). In *Pritchett*, however, the district court of appeal reversed a conviction in a trial where testimony was closed because the court failed to make "findings to justify the closure." 566 So.2d at 7 (citing *Waller*). The state supreme court in *Robertson*, on the other hand, permitted closure in cases where "from the character of the charge and the nature of the evidence, public morality would be injuriously affected . . ." *Robertson, supra* at 119 (citations omitted).

B. EFFECT OF PROPOSED CHANGES:

The bill amends the title of s. 918.16, F.S., to include "testimony of a victim."

The bill amends subsection (1) to conform a statute regarding mental retardation and to eliminate the right of a victim to request a court to allow a victim or witness advocate designated by the state attorney to remain in the court during the closed session.

The bill 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 bill would allow a person who is above the age of 16 or a person who is not mentally retarded to request closure and directs the court to clear the court of all persons except for the jury, the family or guardian of the victim, the parties, counsel for the parties and any secretaries, court officers, and the media.

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 bill 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?

The bill does not eliminate or reduce any agency or program.

(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?

The bill may encourage victims of sex offenses to seek judicial redress for such offenses.

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

The bill would deny the general public the opportunity to observe certain judicial proceedings and would limit the rights 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?

The victim/witness determines whether or not to request closure.

(2) Who makes the decisions?

The court may balance the request of the victim/witness against applicable case law in deciding whether to honor the request for closure. The bill requires closure if the victim requests it, but judicial precedent requires that the court consider various factors in making its closure decision.

(3) Are private alternatives permitted?

The bill only addresses public civil and criminal trials.

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

No program is created.

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

No.

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?

The bill does not create or change a program providing services to families or children.

(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. Removes right of victim to request the presence of victim or witness advocates designated by the state attorney during closed proceedings; conforms statutory cross reference; creates exception for persons not eligible under present law, providing that persons who are not otherwise eligible may seek closure of the court during their testimony regarding a sex offense, and the court must close the proceedings. 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:

The fiscal impact of this bill is likely to be insignificant.

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:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill 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:

N/A

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

N/A

V. COMMENTS:

CS/SB 198, the Senate companion to HB 423, retains the right of a person under the age of 16 or a person who is mentally retarded to request that victim or witness advocates designated by the state attorney be allowed to remain in a closed courtroom. This is current law. See s. 918.16, F.S.

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The bill does not specify what public policy goal is effected by allowing any person to seek closure of the court during testimony on a sex offense. It may be assumed that the bill purports to protect the dignity of the victim, but such a goal will be weighed in particular cases against the strong presumption of openness of judicial proceedings under Florida law. For examples of the policy concerns which can mitigate against openness, see Fla.R.Civ.P. 1.280(c): protective orders to protect a person "from annoyance, embarrassment, oppression, or undue burden or expense," Fla.R.Crim.P. 3.220(l): protective orders "to protect a witness from harassment, unnecessary inconvenience, or invasion of privacy," and Fla.R.Jud.Admin. 2.051(9)(A)(v) and (vi): allowing confidentiality of judicial records when required to "avoid substantial injury to innocent third parties" or to "avoid substantial injury to a party by disclosure of matters protected by" certain laws and rights.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted one amendment. The amendment restored the right provided by current law for that victim who is under the age of 16 or mentally retarded to request that victim or witness advocates designated by the state attorney be allowed to remain in the closed courtroom during the victim's testimony regarding a sexual offense. See present s. 918.16(1), F.S. This amendment also brings the bill into line with the Senate Committee Substitute companion.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

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