

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.)

BILL: SB 794

SPONSOR: Senator Saunders

SUBJECT: Witnesses

DATE: January 13, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill amends section 90.612, F.S., which provides for 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 also be required to monitor the form of questions asked of a child to ensure that the questions are posed in a manner which is 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.

This bill substantially amends section 90.612 of the Florida Statutes.

II. 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, 110 S.Ct. 3157, 111 L.Ed.2d 666 (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, section 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.

III. 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.

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.
