

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: CS/SB 840

SPONSOR: Criminal Justice Committee and Senators Carlton and McKay

SUBJECT: Sexual Abuse Cases

DATE: March 15, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 840 provides that a defendant's confession or admission to crimes involving "sexual abuse" is admissible without having to establish the "corpus delicti" of the crime if the court conducts a hearing outside the presence of the jury and finds that the confession or admission is trustworthy. The term "sexual abuse" is defined. Before the admission of the confession or admission, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence tending to establish the trustworthiness of the defendant's statement. Hearsay evidence and all relevant corroborating evidence may be heard by the court at this hearing. The court's ruling must be based on specific findings of fact, on the record.

The crimes relevant to this CS are sexual battery; unlawful sexual activity with certain minors; lewd, lascivious, or indecent assault or act committed upon or in the presence of persons less than 16 years of age; incest; child abuse, aggravated child abuse, and neglect of a child, if the act involves sexual abuse; contributing to the delinquency or dependency of a child, if the act involves sexual abuse; sexual performance by a child; any other crime involving sexual abuse of another; or any attempt, conspiracy or solicitation to commit any of these offenses.

This CS creates a new and as yet unnumbered section of the Florida Statutes.

II. Present Situation:

A. The Common Law "Corpus Delicti" Rule

The "corpus delicti" of a crime is the body or substance of a crime, which ordinarily includes the act itself which constitutes the crime and the criminal agency of the act. The "corpus delicti rule" is a common law rule of ancient origin which requires that the state show by evidence, independent of a confession or admission, the existence of each element of the crime. Florida follows the corpus delicti rule. Other states and the federal courts follow the "trustworthiness" test or what has also been called the "corroboration rule." Broadly stated, this rule "emphasizes

the reliability of the defendant's confession over the independent evidence of the corpus delicti." 29 Am Jur 2d, Evidence sec. 753. The corroboration rule is, in part, a rule governing the admissibility of a defendant's extrajudicial statements but has also been described as a rule governing the sufficiency of the evidence. *United States v. Dickerson*, 163 F.3d 635 (D.C. Cir. 1999).

The Florida Supreme Court has recently rejected an invitation to abolish the corpus delicti rule. See *J.B. v. State*, 705 So.2d 1376 (Fla. 1998), affirming its earlier holding in *Burks v. State*, 613 So.2d 441 (Fla. 1993), which requires that an independent corpus delicti be established when offering a confession or admission against interest into evidence. The Court has acknowledged, that the rule has been abandoned in several jurisdictions but continues to adhere to the view that "the primary policy reason for the rule is that '[t]he judicial quest for truth requires that no person be convicted out of derangement, mistake or official fabrication.'" *State v. Allen*, 335 So.2d 823, 825 (Fla.1976).

In *Allen*, the Court held that burden of proof upon the State is met by "substantial evidence that a crime was committed, and . . . such proof may be in the form of circumstantial evidence." The evidence need not be "uncontradicted or overwhelming, but it must at least show the existence of each element of the crime." *Id.* at 825. The judge is only required to determine whether the evidence is sufficient to make a prima facie case; "the evidence on which the judge acts may, and often is, conflicting and contradictory." *Holland v. State*, 39 Fla. 178, 187, 22 So. 298 (1897). "In such cases the credibility of the witnesses and the sufficiency of the entire evidence are for the ultimate decision of the jury." *Id.*

Justice Shaw, in his partial concurrence and partial dissent in *Burks*, criticized the corpus delicti rule as having "outlived its usefulness" and raised several points that he believed support abolishing the rule. The Justice quotes at length from the opinion of the Supreme Court of New Jersey in *State v. Lucas*, 30 N.J. 37, 152 A.2d 50, 60 (1959) that the "trustworthiness" test "affords ample protection for the accused and is the rule best designed to serve the ends of justice in the administration of the criminal law." The Justice also argues that the corpus delicti rule has led to "odd results," quoting as support from the opinion of the North Carolina Supreme Court in *State v. Parker*, 315 N.C. 222, 337 S.E.2d 487, 493 (1985):

Curiously, however, many courts have defined the corpus delicti as proof of each element of the crime charged. Plainly, independent evidence of the corpus delicti, defined as it is in this jurisdiction to include proof of injury or loss and proof of criminal agency, does not equate with independent evidence as to each essential element of the offense charged. Applying the more traditional definition of corpus delicti, the requirement for corroborative evidence would be met if that evidence tended to establish the essential harm, and it would not be fatal to the State's case if some elements of the crime were proved solely by the defendant's confession. It is therefore axiomatic that the results obtained through application of a rule requiring independent proof of the corpus delicti will not be consistent or comparable so long as corpus delicti is variously defined.

There is another problem which may account, in part, for the complexities of application of the corpus delicti rule. While defining the corpus delicti "may have been a relatively simple task when crimes were few and concisely defined, . . . modern statutes tend to define offenses more precisely and in greater detail than traditional case law. Defining the corpus delicti has thus become more complex." McCormick, *Evidence* Sec. 145 at 371.

Finally, we note that a strict application of the corpus delicti rule is nearly impossible in those instances where the defendant has been charged with a crime that does not involve a tangible corpus delicti such as is present in homicide (the dead body), arson (the burned building) and robbery (missing property). Examples of crimes which involve no tangible injury that can be isolated as a corpus delicti include certain "attempt" crimes, conspiracy and income tax evasion. The difficulty of applying the traditional corpus delicti rule of corroboration to these offenses may, in part, account for the shift in emphasis to a rule requiring corroboration of each essential element of the crime charged. Perceiving this trend toward a broad interpretation of the corpus delicti, one author notes that:

[T]he corpus delicti rule . . . is periodically misapplied, and its emphasis on the elements of the crime charged as opposed to the reliability of the confession has caused several courts and commentators to question the extent to which the corpus delicti version serves its original purposes, and to prefer the alternative trustworthiness version.

The quoted author's comments are generally reflective of the views expressed by a number of courts and commentators that the corpus delicti version of the corroboration requirement may have "outlived its usefulness." McCormick, *Evidence* Sec. 145 at 370.

Burks, 613 So.2d at 445- 446 (Shaw, concurring in part and dissenting in part).

B. The United States Supreme Court's Interpretation of the Corroboration Rule

In *Opper v. United States*, 348 U.S. 84 (1954), the United States Supreme Court opined that a defendant's confession requires some independent corroborating evidence to serve as the basis for a conviction because of the high incidences of false confessions. The Court recognized that there were similar concerns about the reliability of post-offense admissions to essential facts or elements of the crime. The Court also refused to recognize any exception for exculpatory statements that explain actions rather than admit guilt.

In accordance with its requirement for independent corroboration of confessions or admissions, the Court held that the quantum and type of independent proof "need not be sufficient, independent of the statements, to establish the corpus delicti" but rather consist of "substantial

independent evidence which would tend to establish the trustworthiness of the statement.” *Id.* at 92. The Court added that “[i]t is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth,” and that “[t]hose facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt.”

Opper speaks of “substantial independent evidence.” This phraseology is somewhat similar to “substantial evidence,” which is used in a number of different contexts and typically connotes quantity. Because the evidence must “tend to establish the trustworthiness of the defendant’s statements,” there is an implicit qualitative dimension, as well. The judge must determine if there is evidence that sufficiently corroborates the defendant’s statements such that there are indices of the reliability or trustworthiness of the statement.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 840 provides that a defendant’s confession or admission to “sexual abuse” offenses is admissible without having to establish the “corpus delicti” of the crime if the court conducts a hearing outside the presence of the jury and finds that the confession or admission is trustworthy. The offenses relevant to this corpus delicti exception include:

- ▶ Sexual battery (s. 794.011, F.S.);
- ▶ Unlawful sexual activity with certain minors (s. 794.05, F.S.);
- ▶ Lewd, lascivious, or indecent assault or act committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.);
- ▶ Incest (s. 826.04, F.S.);
- ▶ Child abuse, aggravated child abuse, child abuse and neglect of a child (s. 827.03, F.S.), if the act involves “sexual abuse”;
- ▶ Contributing to the delinquency or dependency of a child (s. 827.04, F.S.), if the act involves “sexual abuse”;
- ▶ Sexual performance by a child (s. 827.071, F.S.);
- ▶ Any other crime involving “sexual abuse” of another; and
- ▶ Any attempt, conspiracy or solicitation to commit any of these offenses.

The CS specifies acts “involving sexual abuse” under ss. 827.03 and 827.04, F.S., because such acts are only a subset of the type of acts which could be prosecuted and punished under those sections.

“Sexual abuse” is defined as meaning “an act of a sexual nature or sexual act that may be prosecuted under any law of this state, including those offenses” specifically designated in the legislation. This definition is necessary because there are numerous and different definitions of “sexual abuse” in the Florida law. “An act of a sexual nature” or a “sexual act” are terms that are commonly used by the Florida courts without need for definition. *See, e.g., Dugger v. Grant*, 610 So.2d 428 (Fla. 1992); *Thompson v. State*, 731 So.2d 819 (Fla. 5th DCA 1999); *Leding v State*, 725 So.2d 1221 (Fla. 4th DCA 1999); *Jones v. State*, 728 So.2d 788 (Fla. 1st DCA 1999); *Banks v. State*, 728 So.2d 768 (Fla. 1st DCA 1999); *State v. Mitchell*, 624 So.2d 859 (Fla. 5th DCA 1993); *Mora v. State*, 484 So.2d 621 (Fla. 2d DCA 1986). This definition prevents such a scenario as suspension of the corpus delicti rule in a burglary case in which a sexual act was

committed, because the sexual act could not be prosecuted as a burglary. However, if the sexual act could be prosecuted, for example, as a sexual battery, the corpus delicti rule would be suspended in the sexual battery case.

Before the admission of the confession or admission, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence tending to establish the trustworthiness of the defendant's statement. In other words, the judge must believe that it is more probable than not that there is sufficient corroborating evidence that tends to establish the trustworthiness of the defendant's statements. The "preponderance of the evidence" standard has been used in the context of certain pretrial matters. *See United States v. Matlock*, 415 U.S. 164 (1974) (voluntariness of consent to search must be shown by a preponderance of the evidence). *See also Lego v. Twomey*, 404 U.S. 477 (1972) (voluntariness of confession must be demonstrated by a preponderance of the evidence) and *Escobar v. State*, 699 So.2d 984 (Fla. 1997) (State must show by a preponderance of the evidence that the confession was freely and voluntarily given and that the rights of the accused were knowingly and intelligently waived).

Hearsay evidence and all relevant corroborating evidence may be heard by the court at this hearing, including the defendant's statements. Hearsay evidence has been introduced at pretrial hearings on a motion to suppress evidence. *See, e.g., Lara v. State*, 464 So.2d 1173 (Fla. 1985) and *State v. Cortez*, 705 So.2d 676 (Fla. 3d DCA 1998).

The court's ruling must be based on specific findings of fact, on the record.

The CS provides for an effective date upon becoming law.

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:

The Criminal Justice Estimating Conference has not met to consider the fiscal impact of CS/SB 840. The CS may increase the likelihood of conviction at trial for persons accused of the offenses enumerated in the bill. However, multifarious factors are involved in a successful prosecution and conviction, and therefore, it appears probable that the impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The new language in CS/SB 840 is virtually identical to language contained in provisions of CS/SB 1258, which passed favorably in the Criminal Justice Committee on March 6, 2000. Those provisions suspend application of the common law corpus delicti rule for particular offenses relating to money laundering.

VIII. Amendments:

None.