

The following are parts of the evidence code that were changed by the legislature during the four years 1996–1999. The statutes are in numerical order as requested by the Court rather than in the order of their enactment. The amended portions of the statutes are in legislative format and exactly follow the text of the actual legislative bills as adopted. This is not the format approved for use by the Court for other rules but instead is the style and format of the published chapter laws. Portions of the revised statutes that were not included in the chapter laws are noted in italics as "unchanged." I understand that this information is needed for the Court's master file and have tried to put it in the format desired by the Court. Please advise if I have failed to do so. West Publishing Co. has already published each of these statutory enactments (over the past four years) and should have no need for a diskette from the Court.

90.4025 Admissibility of paternity determination in certain criminal prosecutions.—If a person less than 18 years of age gives birth to a child and the paternity of that child is established under chapter 742, such evidence of paternity is admissible in a criminal prosecution under ss. 794.011, 794.05, 800.04, and 827.04(4).

History.—s. 8, ch. 96-215.

90.4025 Admissibility of paternity determination in certain criminal prosecutions.—If a person less than 18 years of age gives birth to a child and the paternity of that child is established under chapter 742, such evidence of paternity is admissible in a criminal prosecution under ss. 794.011, 794.05, or 800.04.

History.—s. 8, ch. 96-215; s. 2, ch. 96-409.

90.4025 Admissibility of paternity determination in certain criminal prosecutions.—If a person less than 18 years of age gives birth to a child and the paternity of that child is established under chapter 742, such evidence of paternity is admissible in a criminal prosecution under ss. 794.011, 794.05, 800.04, and 827.04(3)~~827.04(4)~~.

History.—s. 8, ch. 96-215; s. 2, ch. 96-409; s. 27, ch. 99-2.

Reviser's note.—Amended to revise the reference to s. 827.04(4) as created by s. 2, ch. 96-215, Laws of Florida, to conform to the redesignation of subunits of s. 827.04 by s. 10, ch. 96-322, Laws of Florida.

¹90.407 Subsequent remedial measures.—Evidence of measures taken after an injury or harm caused by an event, which measures if taken before the event it occurred would have made injury or harm the event less likely to occur, is not admissible to prove negligence, the existence of a product defect, or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control, or the feasibility of precautionary measures, if controverted, or impeachment.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 13, ch. 99-225.

¹Note.—Section 34, ch. 99-225, provides that "[i]t is the intent of this act and the Legislature to accord the utmost comity and respect to the constitutional prerogatives of Florida's judiciary, and nothing in this act should be construed as any effort to impinge upon those prerogatives. To that end, should any court of competent jurisdiction

enter a final judgment concluding or declaring that any provision of this act improperly encroaches upon the authority of the Florida Supreme Court to determine the rules of practice and procedure in Florida courts, the Legislature hereby declares its intent that any such provision be construed as a request for rule change pursuant to s. 2, Art. 5 of the State Constitution and not as a mandatory legislative directive."

90.5015 Journalist's privilege.—

(1) DEFINITIONS.—For purposes of this section, the term:

(a) "Professional journalist" means a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine. Book authors and others who are not professional journalists, as defined in this paragraph, are not included in the provisions of this section.

(b) "News" means information of public concern relating to local, statewide, national, or worldwide issues or events.

(2) PRIVILEGE.—A professional journalist has a qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news. This privilege applies only to information or eyewitness observations obtained within the normal scope of employment and does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes. A party seeking to overcome this privilege must make a clear and specific showing that:

(a) The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;

(b) The information cannot be obtained from alternative sources; and

(c) A compelling interest exists for requiring disclosure of the information.

(3) DISCLOSURE.—A court shall order disclosure pursuant to subsection (2) only of that portion of the information for which the showing under subsection (2) has been made and shall support such order with clear and specific findings made after a hearing.

(4) WAIVER.—A professional journalist does not waive the privilege by publishing or broadcasting information.

(5) CONSTRUCTION.—This section must not be construed to limit any privilege or right provided to a professional journalist under law.

(6) AUTHENTICATION.—Photographs, diagrams, video recordings, audio recordings, computer records, or other business records maintained, disclosed, provided, or produced by a professional journalist, or by the employer or principal of a professional journalist, may be authenticated for admission in evidence upon a showing, by affidavit of the professional journalist, or other individual with personal knowledge, that the photograph, diagram, video recording, audio recording, computer record, or other business record is a true and accurate copy of the original, and that the copy truly and accurately reflects the observations and facts contained therein.

(7) ACCURACY OF EVIDENCE.—If the affidavit of authenticity and accuracy, or other relevant factual circumstance, causes the court to have clear and convincing doubts as to the authenticity or accuracy of the proffered evidence, the court may decline to admit such evidence.

(8) SEVERABILITY.—If any provision of this section or its application to any particular

person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.

History.—s. 1, ch. 98-48.

90.503 Psychotherapist-patient privilege.—

(1) For purposes of this section:

(a) A "psychotherapist" is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or
4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Health and Rehabilitative Services pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(b) A "patient" is a person who consults, or is interviewed by, a psychotherapist for purposes of diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(c) A communication between psychotherapist and patient is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the patient in the consultation, examination, or interview.
2. Those persons necessary for the transmission of the communication.
3. Those persons who are participating in the diagnosis and treatment under the direction of the psychotherapist.

(2)–(4) *unchanged.*

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 40, ch. 90-347; s. 1, ch. 92-57; s. 19, ch. 93-39; s. 475, ch. 95-147; s. 28, ch. 99-2.

Reviser's note.—Section 19, ch. 93-39, Laws of Florida, purported to amend s. 90.503(1), but failed to republish paragraphs (b) and (c). In the absence of affirmative evidence that the Legislature intended to repeal paragraphs (b) and (c), coupled with the fact that the amendment by s. 19, ch. 93-39, affirmatively evidences an intent to preserve the existing paragraph structure, subsection (1) is reenacted to confirm that the omission was not intended.

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2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or
4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Family Health and Rehabilitative Services pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(1)(b)–(4) unchanged.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 40, ch. 90-347; s. 1, ch. 92-57; s. 19, ch. 93-39; s. 475, ch. 95-147; s. 28, ch. 99-2; s. 5, ch. 99-8.

90.5036 Domestic violence advocate-victim privilege.—

(1) unchanged.

(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim. The privilege applies to confidential communications made between the victim and the domestic violence advocate and to records of those communications only if the advocate is registered under s. ~~39.905-415.605~~ at the time the communication is made. This privilege includes any advice given by the domestic violence advocate in the course of that relationship.

(3) unchanged.

History.—s. 7, ch. 95-187; s. 127, ch. 98-403.

90.6063 Interpreter services for deaf persons.—

(1)–(4) unchanged.

(5) The appointing authority may channel requests for qualified interpreters through:

(a) unchanged.

(b) The Vocational Rehabilitation Program Office of the Department of Labor and Employment Security Health and Rehabilitative Services; or

(5)(c)–(8) unchanged.

History.—ss. 1, 2, 3, 4, 5, 7, 8, 9, ch. 80-155; s. 42, ch. 81-259; s. 1, ch. 90-123; s. 2, ch. 93-125; s. 486, ch. 95-147; s. 6, ch. 99-8.

90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s.

90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(1)–(7) *unchanged.*

(8) **PUBLIC RECORDS AND REPORTS.**—Records, reports, statements reduced to writing, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report, excluding in criminal cases matters observed by a police officer or other law enforcement personnel, unless the sources of information or other circumstances show their lack of trustworthiness. The criminal case exclusion shall not apply to an affidavit otherwise admissible under s. 316.1934 or s. 327.354 ~~s. 316.1934(5)~~.

(9)–(24) *unchanged.*

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; ss. 20, 22, ch. 78-361; ss. 1, 2, ch. 78-379; s. 4, ch. 85-53; s. 11, ch. 87-224; s. 2, ch. 90-139; s. 3, ch. 90-174; s. 12, ch. 91-255; s. 498, ch. 95-147; s. 1, ch. 95-158; s. 2, ch. 96-330.

90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(1)–(21) *unchanged.*

(22) **FORMER TESTIMONY.**—Former testimony given by the declarant which testimony was given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, or a person with a similar interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination; provided, however, the court finds that the testimony is not inadmissible pursuant to s. 90.402 or s. 90.403, at a civil trial, when used in a retrial of said trial involving identical parties and the same facts:

(23)–(24) *unchanged.*

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; ss. 20, 22, ch. 78-361; ss. 1, 2, ch. 78-379; s. 4, ch. 85-53; s. 11, ch. 87-224; s. 2, ch. 90-139; s. 3, ch. 90-174; s. 12, ch. 91-255; s. 498, ch. 95-147; s. 1, ch. 95-158; s. 2, ch. 96-330; s. 1, ch. 98-2.

90.953 Admissibility of duplicates.—A duplicate is admissible to the same extent as an original, unless:

(1) The document or writing is a negotiable instrument as defined in s. 673.1041, a security as defined in s. ~~678.1021~~–678.102, or any other writing that evidences a right to the payment of money, is not itself a security agreement or lease, and is of a type that is transferred by delivery in the ordinary course of business with any necessary endorsement or assignment.

(2)–(3) *unchanged.*

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 57, ch. 92-82; s. 29, ch. 99-2.

Reviser's note.—Amended to conform to the repeal of former s. 678.102 by s. 25, ch. 98-11, Laws of Florida, and the creation of s. 678.1021, which also defines "security," by s. 1, ch. 98-11.