

The Florida Bar Code and Rules of Evidence Committee recommends for adoption of the following amendments to the Florida Evidence Code:

CHAPTER 2000-316

Senate Bill No. 794

An act relating to witnesses; amending s. 90.502, F.S.; providing that a discussion or activity that is not a meeting for purposes of s. 286.011, F.S., does not waive the attorney-client privilege; amending s. 90.612, F.S.; requiring a judge to protect a witness under a specific age during interrogation and to restrict unnecessary repetition of questions; requiring that questions be stated in a form appropriate to the age and understanding of the witness; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) is added to section 90.502, Florida Statutes, to read:

90.502 Lawyer-client privilege.—

(6) A discussion or activity that is not a meeting for purposes of s. 286.011 shall not be construed to waive the attorney-client privilege established in this section. This shall not be construed to constitute an exemption to either s. 119.07 or s. 286.011.

Section 2. Section 90.612, Florida Statutes, is amended to read:

90.612 Mode and order of interrogation and presentation.—

(1) The judge shall exercise reasonable control over the mode and order of the interrogation of witnesses and the presentation of evidence, so as to:

(a) Facilitate, through effective interrogation and presentation, the discovery of the truth.

(b) Avoid needless consumption of time.

(c) Protect witnesses from harassment or undue embarrassment.

(2) Cross-examination of a witness is limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in its discretion, permit inquiry into additional matters.

(3) Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

The judge shall take special care to protect a witness under age 14 from questions that are in a form that cannot reasonably be understood by a person of the age and understanding of the witness, and shall take special care to restrict the unnecessary repetition of questions.

Section 3. This act shall take effect July 1, 2000.

Approved by the Governor June 19, 2000.

Filed in Office Secretary of State June 19, 2000.

CHAPTER 2001-132

Senate Bill No. 1066

An act relating to the Florida Evidence Code; creating s. 90.4026, F.S.; providing definitions; providing for the inadmissibility of certain statements, writings, or benevolent gestures as evidence in a civil action; providing for the admissibility of certain statements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 90.4026, Florida Statutes, is created to read:

90.4026 Statements expressing sympathy; admissibility; definitions.—

(1) As used in this section:

(a) “Accident” means an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party.

(b) “Benevolent gestures” means actions that convey a sense of compassion or commiseration emanating from human impulses.

(c) “Family” means the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half-brother, half-sister, adopted child of parent, or spouse’s parent of an injured party.

(2) The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident and made to that person or to the family of that person shall be inadmissible as evidence in a civil action. A statement of fault, however, which is part of, or in addition to, any of the above shall be admissible pursuant to this section.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 1, 2001.

Filed in Office Secretary of State June 1, 2001.

The Florida Bar Code and Rules of Evidence Committee recommends against the adoption of the following amendment to the Florida Evidence Code:

CHAPTER 2001-221

Committee Substitute for Senate Bill No. 2012

An act relating to character evidence; amending s. 90.404, F.S.; revising a provision of law governing character evidence to permit the admission of certain evidence of the defendant’s commission of acts of child molestation under certain circumstances; providing a definition; providing an effective date.

WHEREAS, the Legislature finds that in cases of child sexual abuse, the credibility of the victim is frequently a focal issue of the case, and

WHEREAS, the Legislature finds that evidence which shows that an accused child molester has molested children at other times may be relevant to corroborate the victim's testimony, and

WHEREAS, the Legislature finds that evidence which shows that an accused child molester has molested children at other times may have a probative value which outweighs its prejudicial effect, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 90.404, Florida Statutes, is amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

(b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "child molestation" means conduct proscribed by s. 794.011 or s. 800.04 when committed against a person 16 years of age or younger.

(c)(b)1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a) or paragraph (b), no fewer than 10 days before trial, the state shall furnish to the defendant or to the defendant's counsel accused a written statement of the acts or offenses it intends to offer, describing them with the

particularity required of an indictment or information. No notice is required for evidence of offenses used for impeachment or on rebuttal.

2. When the evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received and is to be considered. After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.

Section 2. This act shall take effect July 1, 2001.

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.