

DATE: May 17, 1994

CHAPTER #: 94-161, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1981

RELATING TO: Administrative Procedures

SPONSOR(S): Representative Shepard

STATUTE(S) AFFECTED: Sections 120.58 and 776.207(2), Florida Statutes

COMPANION BILL(S): SB 2564

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

- (1) JUDICIARY 19 YEAS 0 NAYS
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1981 creates a new subsection to Chapter 120.58, Florida Statutes, of the Administrative Procedures Act. The bill applies provisions similar to those contained in the Rape Shield Law to administrative proceedings involving sexual misconduct of licensed professionals. Specifically, evidence of a complainant's prior sexual history would be inadmissible, a complainant would not be required to present corroborating evidence of the sexual misconduct, and evidence as to a complainant's sexual reputation or dress would be inadmissible.

HB 1981 also would allow evidence of the conduct of the accused professional to be entered into evidence in sexual misconduct cases. Evidence of patterns of conduct of the professional as well as evidence of prior sexual misconduct would be admissible in sexual misconduct cases.

HB 1981 has no fiscal impact.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida's Rape Shield Law (Section 794.022, Florida Statutes) excludes certain evidence regarding a victim of sexual battery which is considered irrelevant to a sexual battery prosecution. Specifically, the law provides: (1) that the testimony of the victim is not required to be corroborated in prosecutions for sexual battery or for sexual activity with a child; (2) that specific instances of prior consensual activity between the victim and a person other than the offender is inadmissible in such prosecution, unless it is established in camera that such evidence may prove that the defendant is not the source of the semen, pregnancy, injury, or disease, or it is established in camera that the evidence regarding the victim's prior sexual behavior is so similar to the conduct or behavior in the case that it is relevant to the issue of consent; and (3) that reputation evidence regarding the victim's prior sexual conduct, or evidence showing that the manner of the victim's dress incited the sexual battery, is not admissible in such prosecution.

The policy behind the Rape Shield Law is to prevent victims of rape from being victimized a second time, i.e., by exposing irrelevant but potentially embarrassing or damaging information about the victim's sexual history or reputation.

The protections provided to rape victims by the Rape Shield Law are not currently available in disciplinary actions against licensed professionals. In the case of Department of Professional Regulation v. Wise, 575 So.2d 713 (1991), the First District Court of Appeal found that Section 794.022, Florida Statutes, does not apply to administrative hearings, stating that "Section 794.022 is expressly limited by its own language to 'prosecution[s] under s. 794.01.'" In that case, evidence of a complainant's former history was admitted in an administrative disciplinary hearing in which the psychiatrist had been charged with influencing female patients to engage in sexual relations with him. Although the court found that the Rape Shield Law did not apply to administrative hearings, it did go on to find that "the evidence complained of was clearly irrelevant and failed to meet" the threshold requirement set out in Section 120.58(1)(a), Florida Statutes. The court noted that "[t]hat section provides a relaxed standard for the admissibility of evidence in administrative proceedings, but it specifically provides a threshold requirement that 'irrelevant ... evidence shall be excluded....'"

Section 90.404(2)(a), Florida Statutes, statutorily establishes what is commonly known as the "Williams Rule" [Williams v. State, 110 So.2d 654(Fla. 1959)] in the Florida Evidence Code. The Williams Rule provides that similar act evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Such evidence is inadmissible however, when the relevance of the evidence is solely to prove bad character or propensity to commit such act.

Pursuant to s. 90.404(2)(b), Florida Statutes, the state must provide notice to the accused, at least 10 days before trial, a written statement of the acts or offenses it intends to offer, in which the acts or offenses must be described with the particularity required in a criminal indictment or information. Such notice is not required when the evidence of offenses is used for impeachment or rebuttal. Like the Rape Shield Law, the "Williams Rule" does not apply in administrative proceedings.

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HB 1981 would engraft a version of the Rape Shield Law and the Williams Rule into certain administrative proceedings. Complainants alleging sexual misconduct against licensed professionals would be afforded protection from the admission of irrelevant evidence concerning the complainant's prior sexual conduct. Complainants would further be enabled to provide evidence of other violations, wrongs, or acts of the accused professional, when such evidence would be relevant to prove a material fact in issue.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 adds subparagraphs (2) and (3) to s. 120.58(1)(a), Florida Statutes.

Subparagraph (2) provides that similar fact evidence of other violations, wrongs or acts is admissible when relevant to prove a material fact in issue. Such evidence is inadmissible when the evidence is relevant solely to prove bad character or propensity to commit such act. Unless such evidence is to be used solely for impeachment or rebuttal purposes, the State must furnish the party whose substantial interests are determined and whose other acts or offenses will be the subject of such evidence a written statement of the acts or offenses it intends to offer within 10 days before the administrative proceeding.

Subparagraph (3) provides that testimony of the complainant need not be corroborated. The subparagraph further provides that evidence concerning the complainant's prior sexual conduct with individuals other than the alleged offender is inadmissible, subject to certain exceptions. Such evidence would be admissible in cases where it has been established to the hearing officer that the complainant is mistaken as to the identity of the perpetrator of the sexual misconduct.

Also, the evidence would be admissible where consent by the complainant is at issue and it has been established to the hearing officer that such evidence tends to establish a pattern of conduct or behavior of the complainant which is so similar as to the conduct or behavior in the case that it is relevant to the issue of consent. The prerequisite evidence must be presented to the hearing officer in camera at which time the hearing officer would make a determination as to whether either of the evidence falls under either of the two exceptions.

Finally, subparagraph (3) provides that evidence of a complainant's reputation with regard to prior sexual conduct is inadmissible. No exceptions are provided for admission of such evidence.

Section 2 reenacts s. 766.207, Florida Statutes, in order to incorporate the amendment into section 120.58, Florida Statutes, referenced therein.

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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:

None.

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.

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D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

HB 1981 was substituted for identical bill SB 2564.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

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