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PROTECTING CHILDREN IN COURT

by Jay Howell

There is no doubt that testifying in court is a difficult ordeal - even for professional witnesses. The problems are compounded for children who are victims of or witnesses to crimes. When a child is called to testify, the playing field is not level. The use of words and phrases that are beyond the developmental level of the child place an unfair burden on all children. Individual examples of this kind of abuse are common throughout the legal system.

An eight-year-old child sexual assault victim is asked in a Florida courtroom, "Can you identify the perpetrator?" A nine-year-old is repeatedly asked, "Did the person who committed the crime have a weapon?". A ten-year-old victim of a sexual assault is asked, "When you went down to that guy's house on the corner, and he invited you in, and took you to the back bedroom, were there any other individuals present in the home?" A twelve-year-old child sexual assault victim is asked, "Do you consider yourself to be an introvert or an extrovert?" When the child witness is silent in response to these inquiries, the adults quickly conclude that the child doesn't know the answer. However, if the question is rephrased in a simple, more direct manner, the child can provide the requested information.

For the past four years we have been attempting to enact a law that would help children who testify in court. This year the legislature finally acted. On July 1, 2000, the new law went into effect and requires our judges to take special care to protect a witness under age 14 from questions that are in a form that can't reasonably be understood by a person of the age and understanding of the witness. The new law also requires the judge to take special care to restrict the unnecessary repetition of questions to child witnesses.

One would think that this type of legislation would easily find many friends in the legislature and a quick enactment into law. Nothing could be further from the truth. Many legislators, including several

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here in North Florida, would not even sponsor the legislation. Fortunately, Senator Burt Saunders of Naples and Representative Doug Wiles of St. Augustine agreed to champion the effort.

Though the bill is now law, the battle is not over. It will take years to educate our courts and the participants in our legal system to the particular communication needs of children. There is an excellent short text that will educate any interested person who is willing to spend the hour it takes to read it. It is the Handbook on Questioning Children by Anne Graffam Walker, Ph.D. The book is available from the American Bar Association Center on Children and the Law, 1800 M Street, N.W., Washington, D.C. 20036, telephone 202/662-1743. The cost is \$34.95.

We hope that the enactment of this new law will have a trickle down effect throughout our criminal and civil justice systems. Law enforcement investigators, educators, social workers, child protection professionals, medical personnel, mental health counselors, and a host of other professions could do well by using the information in this manual and appreciating the sensitivities expressed in the new statute. If our sense of fair play and justice is to have any real meaning, we must insist that children are questioned in a fair and reasonable manner. The new law can be found at §90.612, Florida Statutes.