

1985

## Session Law 85-028

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Year 1985	Session Law No. 85 28	IOF Cite 1985, I, 77-8	#pp 2
Prime Bill# H.B. 126	Sponsor	Comp./Sim. Bills H. 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200	
JLHC Hist. Leg. Cites	Senate pp.#s 126	House pp.#s 19, 110, 1	#pp
Committee of Ref.	Senate Jud. Civ	House Jud. Civ	Previous versions?

Committee Records

H/S	Committee	Year	Record Series: Folder Title, etc.	Location Cite	#pp
S	Jud. Civ	1985	Bill file 115 224	18/1553	
			H - 126	18/1553	
H	Jud. Civ	1985	Bill file 115 136	18/1553	
			H - 126	18/1553	

Senate/House Journals

Page	?	Date	#pp	Page	?	Date	#pp

Tape Recordings

H/S/Floor	Committee/subcommittee	Date	# Tapes	Location Cite

Other Documentation

Record series title, folder title, etc.	Location Cite	#pp

**GENERAL ACTS  
RESOLUTIONS AND MEMORIALS  
ADOPTED BY THE  
NINTH LEGISLATURE OF FLORIDA  
UNDER THE CONSTITUTION  
AS REVISED IN 1968**

**During the Special Session  
December 6 and 7, 1984  
and the Regular Session  
April 2, 1985 through May 31, 1985**



**Volume I, Part One**

**Published by Authority of Law**

**Under Direction of the**

**JOINT LEGISLATIVE MANAGEMENT  
COMMITTEE**

**TALLAHASSEE**

**1985**

Section 1. Subsection (2) of section 516.12, Florida Statutes, is hereby repealed.

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

Approved by the Governor May 24, 1985.

Filed in Office Secretary of State May 24, 1985.

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CHAPTER 85-28

House Bill No. 136

An act relating to evidentiary privileges; amending s. 415.109, F.S., providing that communications to clergymen are privileged in cases involving abuse of aged or disabled persons; amending s. 415.512, F.S., providing that communications to clergymen are privileged in cases involving child abuse or neglect; providing an effective date.

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

Section 1. Section 415.109, Florida Statutes, is amended to read:

415.109 Abrogation of privileged communications in cases involving abuse, neglect, or exploitation of aged or disabled persons.--The privileged quality of communication between husband and wife and between any professional person and his patient or client, and any other privileged communication except that between attorney and client, or the privilege provided in s. 90.505, as such communication relates to both the competency of the witness and to the exclusion of confidential communications, does not apply to any situation involving known or suspected abuse, neglect, or exploitation and does not constitute a ground for failure to report as required by s. 415.103, failure to cooperate with the department in its activities pursuant to ss. 415.101-415.112, or failure to give evidence in any judicial proceeding relating to abuse, neglect, or exploitation of an aged or disabled person.

Section 2. Section 415.512, Florida Statutes, is amended to read:

415.512 Abrogation of privileged communications in cases involving child abuse or neglect.--The privileged quality of communication between husband and wife and between any professional person and his patient or client, and any other privileged communication except that between attorney and client or the privilege provided in s. 90.505, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required by s. 415.504, failure to cooperate with the department in its activities pursuant to ss. 415.502-415.514, or failure to give evidence in any judicial proceeding relating to child abuse or neglect.

Section 3. This act shall take effect October 1, 1985.

Approved by the Governor May 24, 1985.

Filed in Office Secretary of State May 24, 1985.

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CHAPTER 85-29

House Bill No. 146

An act relating to penalties; creating s. 775.0846, F.S., defining the term "bulletproof vest"; providing a separate penalty for wearing a bulletproof vest during the commission or attempted commission of specified crimes under certain circumstances; providing an effective date.

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

Section 1. Section 775.0846, Florida Statutes, is created to read:

775.0846 Wearing bulletproof vest while committing certain offenses.--

(1) For the purposes of this section, the term "bulletproof vest" means a bullet-resistant soft body armor providing, as a minimum standard, the level of protection known as "threat level I," which shall mean at least seven layers of bullet-resistant material providing protection from three shots of 158-grain lead ammunition fired from a .38 calibre handgun at a velocity of 850 feet per second.

(2) A person is guilty of the unlawful wearing of a bulletproof vest when, acting alone or with one or more other persons and while possessing a firearm, he commits or attempts to commit any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy, and, in the course of and in furtherance of any such crime, he wears a bulletproof vest.

(3) Any person who is convicted of a violation of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 1985.

Approved by the Governor May 24, 1985.

Filed in Office Secretary of State May 24, 1985.

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CHAPTER 85-30

House Bill No. 203

An act relating to contractual services; amending s. 287.058, F.S., exempting state agencies from certain requirements with respect to procurement of contractual services when the cost of such services is \$500 or less;

An act relating to evidentiary privileges; amending s. 415.109, F.S., providing that communications to clergymen are privileged in cases involving abuse of aged or disabled persons; amending s. 415.512, F.S., providing that communications to clergymen are privileged in cases involving child abuse or neglect, providing an effective date.

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

Section 1. Section 415.109, Florida Statutes, is amended to read:

415.109 Abrogation of privileged communications in cases involving abuse, neglect, or exploitation of aged or disabled persons.--The privileged quality of communication between husband and wife and between any professional person and his patient or client, and any other privileged communication except that between attorney and client, or the privilege provided in s. 90.505, as such communication relates to both the competency of the witness and to the exclusion of confidential communications, does not apply to any situation involving known or suspected abuse, neglect, or exploitation and does not constitute a ground for failure to report as required by s. 415.103, failure to cooperate with the department in its activities pursuant to ss. 415.101-415.112, or failure to give evidence in any judicial proceeding relating to abuse, neglect, or exploitation of an aged or disabled person.

Section 2. Section 415.512, Florida Statutes, is amended to read:

415.512 Abrogation of privileged communications in cases involving child abuse or neglect.--The privileged quality of communication between husband and wife and between any professional person and his patient or client, and any other privileged communication except that between attorney and client or the privilege provided in s. 90.505, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required by s. 415.504, failure to cooperate with the department in its activities pursuant to ss. 415.502-415.514, or failure to give evidence in any judicial proceeding relating to child abuse or neglect.

Section 3. This act shall take effect October 1, 1985.

STORAGE NAME: SS HB 136-85

Date: March 25, 1985

Revised: April 5, 1985

Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY  
STAFF ANALYSIS

BILL# HB 136 SPONSOR Lippman & Mills  
EFFECTIVE DATE Oct. 10, 1985 IDENTICAL/SIMILAR BILLS HB 774

RELATING TO Clergyman Privilege

OTHER COMMITTEES OF REFERENCE \_\_\_\_\_

I. SUMMARY:

A. Present Situation:

The Florida Evidence Code in s.90.505(2), F.S., specifically provides for an evidentiary privilege with respect to confidential communications to a clergyman. The privilege protects confidential communications made by a person to a clergyman in his capacity as spiritual adviser. The privilege may be exercised by a clergyman on behalf of the person making such communication in the absence of evidence to the contrary.

The terms "clergyman" and "confidential" are defined by s.90.505(1), F.S., for purposes of the section.

Section 415.512, F.S., abrogates the privilege customarily extended to communications with a clergyman in cases of child abuse.

In addition s.415.504, F.S., requires mandatory reports to HRS of known or suspected child abuse. Criminal penalties for failure to report are set forth in s.415.513, F.S.

Similarly, s.415.109, F.S., abrogates privileged communications in cases involving abuse, neglect, or exploitations of aged or disabled persons, and s.415.103, F.S., requires mandatory reporting of such cases. Criminal penalties for failure to report are set forth in s.415.111, F.S.

A clergyman privilege in various forms was recognized in early American case law, and prior to the 1976 revision of the Florida Evidence Code, a "minister's" privilege was set forth in s.90.241, F.S. (1975). Additionally, prior to 1976, former section 827.07(10), F.S. (1975) provided for a general



abrogation of evidentiary privileges in cases of child abuse or neglect. This former section, however, exempted the attorney-client privilege and the clergyman privilege from the operation of the abrogation statute.

In 1976, the Legislature completely revised the Evidence Code in Chapter 76-237, Laws of Florida. This chapter not only repealed former s.90.241, F.S., but also significantly revised the nature and scope of the clergyman privilege now set forth in s.90.505, F.S. Chapter 76-237, Laws of Florida, also amended s.827.07(10), F.S., to delete the exception formerly provided the clergyman privilege in child abuse and neglect cases.

B. Effect of Proposed Changes:

This bill amends s.415.512, F.S., to provide that the clergyman privilege shall not be abrogated in child abuse and neglect cases.

II. ECONOMIC IMPACT:

A. Public: None

B. Government: None


III. COMMENTS:

Issues relating to the constitutionality of s.415.512, F.S., are currently in both federal and state litigation. See John Doe v. Pingree, Smith & Reno, Case No. 84-2610. (U.S. Dist. Ct. S.D. Fla). See also State v. Mellish, Case No. 84-1930 (Fla. 4th DCA).

IV. AMENDMENTS:

The Judiciary Committee amended the bill to also provide for the clergyman privilege of s.90.505, F.S., to be excepted from the general abrogation of privileges in cases involving abuse to the elderly and disabled.

V. PREPARED BY Kent J. Perez 

VI. STAFF DIRECTOR Richard Hixson 

COMMITTEE APPEARANCE RECORD House of Representatives

4-3-85 HB 136  
(Date) (Bill Number)

Name THOMAS A HORKAN

Address PO Box 1571

City TALLAHASSEE State FLA

Representing FLA CATHOLIC CONF

Lobbyist (registered with House) Yes  No

State employee Yes  No

I wish to speak

Proponent   
 Opponent   
 Information   
 Request of Chairman

Subject \_\_\_\_\_

H-16(1976)

COMMITTEE APPEARANCE RECORD House of Representatives

4/3/85 HB 136  
(Date) (Bill Number)

Name ELAINE BLOOM

Address 20435 NE 20th Court

City MIAMI State FL

Representing UNITED PROTESTANT APPENL  
FLA ASSN OF JEWISH FEDERATIONS

Lobbyist (registered with House) Yes  No

State employee Yes  No

I wish to speak

Proponent   
 Opponent   
 Information   
 Request of Chairman

Subject CLERGY CONFIDENTIALITY

## Embattled clergy

### Is confession always private?

The traditional premise that clergy-penitent conversations are confidential is facing a new test. Although only a handful of cases have challenged this longstanding concept, some clergymen are worried that more may be coming.

Recent cases in California, Florida and Texas have brought the issue into focus over reporting of child abuse. Some state laws require reporting of suspected cases of child abuse, and the clergy is not exempted.

Although the cases are not widespread, some clergymen are concerned, said Dean Kelley, director for religious and civil liberty with the National Council of Churches in New York City.

"We're getting some calls of this type," said James Parker, staff attorney for the Christian Legal Society in Oak Park, Ill., about questions from clergymen seeking advice on how to deal with the confidentiality issue in child abuse cases. "Our position on all these questions is do what the church doctrine says." In most faiths, confessions to clergy are confidential.

But this may lead to court action. That's what happened when John Mellish of the Mardate Church of the Nazarene in Fort Lauderdale, Fla., refused to testify in state court against a parishioner

accused of child abuse in 1984. *Florida v. Mellish*, 84-9852CF810.

The trial court held Mellish in contempt, saying that the statute mandating child abuse reporting did not exempt clergymen, said Norman Kent, an American Civil Liberties Union lawyer who represented Mellish. The case was appealed to the 4th District Court of Appeals in West Palm Beach. *Mellish v. State of Florida*, 84-1930.

This statute was amended during the 1985 session of the Florida legislature and now exempts the clergy from reporting in those cases. The measure took effect Oct. 1. The court dismissed Mellish's appeal.

The clergy is not exempt in Texas, according to an opinion Aug. 5 from Attorney General Jim Mattox. Clergymen must report the conversations even if confidentially disclosed, and testify in court if asked, he said.

Although sentiment is strong toward prosecuting child abuse cases, Florida's clergy exemption legislation passed easily, said Richard Hixson, staff director of the House Judiciary Committee. "We think it was because [the exemption] would not severely hinder the work of prosecutors," Hixson said.

But prosecutors say they could be hampered. "Obviously if you have a confession to a priest, it can win or lose a case," said Christopher Rundle, chief of sexual battery prosecution for the Miami state attorney's office.

Despite society's denunciation of child

abuse, there is no more reason why this offense should be exempted from clergy-penitent privilege than other felonies, said Kelley, who is a lawyer.

There are other problems. Disclosure of confidences received during confessions not only would violate religious tenets for some faiths but would cause clergymen to be excommunicated, which is the case in the Roman Catholic Church. Churchgoers might be less willing to seek penitence for fear that their confessions might be disclosed, Kelley said.

And what about civil liability? In California, a woman convicted of embezzling \$25,000 from her parish filed a \$5 million lawsuit in August against her Episcopal priest, charging him with disclosing her confession to authorities. *Edwards v. St. Stephens Episcopal Church*, No. 844020, San Francisco Superior Court. It charges defendants with fraud, invasion of privacy, negligence and breach of fiduciary duty.

Few clergymen have been forced to reveal confidences gained in confessions because the clergy-penitent privilege stems from the common law and is the oldest and most widely accepted privilege. But with the trend toward vigorous prosecution in child abuse cases, more challenges are expected, said Mark Chopko, a staff attorney for the U.S. Catholic Conference in Washington. "The stage is set for it," he said.

—Faye A. Silas

## Quotes

"Rule of thumb: the smaller the library, the more valuable the firm. Profitable firms send clerks to the public library and use their computers."—Columnist Milt Policzner, writing in the *Los Angeles Daily Journal*.

"I believe that most lawyers and, certainly, most judges take very seriously and sacredly the admonition that they will neither lie nor cheat. But I also believe that many do not accept as their responsibility the requirement that they not tolerate those who do."—Anton Valukas, U.S. Attorney for the Northern District of Illinois, in a speech in Chicago criticizing the legal



Valukas

profession for tolerating the corruption uncovered in the Operation Greylord investigation.

"[I]n remembrance of his cutting my hair for 38 years and in special memory of all the nice talks and jokes we had together."—Otto Keller, of London who, in his will, bequeathed \$2,100 to his barber, Charles Landsman. Keller, who died last year, left an estate of about \$328,000.

"We must rein in the runaway tort system and bring its costs under control."—Assistant Attorney General Richard K. Willard, who says an important element of reform "is to keep damage awards proportional to economic loss by placing a cap on awards for intangible injuries, such as pain and suffering or mental distress."

"[D]ebating the Constitution quickly leads you to think hard about the nature of man in society, of justice, freedom and law."—Syndicated columnist David Broder.

19/1339

# Clergy confidentiality bill passes House, goes to Senate

By MARK SILVA  
Capital Bureau Chief

**TALLAHASSEE** — The House voted Monday to recognize the confidentiality of communications between a parishioner and his clergyman in conversations about abuse of children and the elderly.

The bill (H136), which now moves to the Senate, proposes to allow clergymen the same privilege of privacy concerning reports of child abuse they now have when they learn about other crimes from parishioners in confidence.

Feared by some children's advocates as an erosion of the Florida law that requires most people to report suspected cases of child abuse, it is supported by its sponsors as a matter of the freedom of religion.

"It's an issue of church and state," said one of the House sponsors, Rep. Fred Lippman, D-Hollywood.

Lippman and House Majority Leader Jon Mills, D-Gainesville, say the bill simply recognizes the tenets of religions that require clergymen not to divulge to others what they hear in the privacy of a confessional or counseling session.

The bill is backed by Catholic and Jewish lobbyists, who have urged the Legislature to pass such a law in the wake of court cases that challenge the right of clergy to withhold what they learn about child abuse in a private conversation from prosecutors.

In Broward County, Nazarene minister John Mellish is awaiting the ruling of the Fourth District Court of Appeal in his challenge of a circuit judge's attempt to jail him for refusing to say what a convicted child molester might have told him in confidence.

In Miami, Catholics have sued the state attorney and state officials in federal court, asking the court to rule that the state law requiring clergymen to report what they learn in confidence about child abuse is unconstitutional.

The vote on the clergymen's privilege bill

Monday was 105 to 3, with Reps. Frances Irvine, R-Orange Park, Peggy Simone, R-Bradenton, and Tom Toblissen, D-Gonzalez, opposing.

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A bill to be entitled

An act relating to evidentiary privileges;  
amending ss. 415.109, 415.512, F.S.; providing  
that certain communications to clergymen are  
privileged in cases involving the abuse or  
neglect of children, the aged, or disabled  
persons; providing an effective date.

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

Section 1. Section 415.109, Florida Statutes, is  
amended to read:

415.109 Abrogation of privileged communications in  
cases involving abuse, neglect, or exploitation of aged or  
disabled persons.--The privileged quality of communication  
between husband and wife and between any professional person  
and his patient or client, and any other privileged  
communication except that between attorney and client and  
except that protected by the privilege provided in s. 90.505  
if that privilege is compelled by the tenets and practices of  
the particular religious organization or denomination, as such  
communication relates to both the competency of the witness  
and to the exclusion of confidential communications, does not  
apply to any situation involving known or suspected abuse,  
neglect, or exploitation and does not constitute a ground for  
failure to report as required by s. 415.103, failure to  
cooperate with the department in its activities pursuant to  
ss. 415.101-415.112, or failure to give evidence in any  
judicial proceeding relating to abuse, neglect, or  
exploitation of an aged or disabled person.

1 Section 2. Section 415.512, Florida Statutes, is  
2 amended to read:

3 415.512 Abrogation of privileged communications in  
4 cases involving child abuse or neglect.--The privileged  
5 quality of communication between husband and wife and between  
6 any professional person and his patient or client, and any  
7 other privileged communication except that between attorney  
8 and client and except that protected by the privilege provided  
9 in s. 90.505 if the privilege is compelled by the tenets and  
10 practices of the particular religious organization or  
11 denomination, as such communication relates both to the  
12 competency of the witness and to the exclusion of confidential  
13 communications, shall not apply to any situation involving  
14 known or suspected child abuse or neglect and shall not  
15 constitute grounds for failure to report as required by s.  
16 415.504, failure to cooperate with the department in its  
17 activities pursuant to ss. 415.502-415.514, or failure to give  
18 evidence in any judicial proceeding relating to child abuse or  
19 neglect.

20 Section 3. This act shall take effect October 1, 1985.

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SENATE SUMMARY

Provides that certain communications to clergymen are privileged in cases involving child abuse or neglect, or the abuse, neglect, or exploitation of aged or disabled persons.

18/1553

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Skuthan</u> <i>JS</i>	<u>Lester</u>	1. <u>JCI</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Evidentiary Privileges

BILL NO. AND SPONSOR:

SB 994 by  
Senator Dunn

I. SUMMARY:

A. Present Situation:

Sections 90.501-90.510, F.S., provide instances wherein confidential communications between certain individuals are privileged and thus cannot be revealed without the consent of the party in whose benefit the privilege inures.

Section 90.505(2), F.S., provides that certain communications between a clergyman and a person are privileged if such communications are: 1) made privately for the purpose of seeking spiritual counsel and advice from the clergyman, and 2) are not intended for further disclosure. Section 90.505(1), F.S., defines "clergyman" as "... a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church." Ehrhardt, Florida Evidence s. 505.1, p. 241, (2d Ed. 1984), provides that "... self-designated ministers and leaders of sects not usually defined as churches..." do not fall within the definition of "clergyman."

Sections 415.109 and 415.512, F.S., provide exceptions to the traditional privileges enumerated in Chapter 90, F.S. Section 415.109, F.S., provides that, except for communications made between an attorney and his client pursuant to s. 90.502, F.S., confidential communications applying to situations involving the known or suspected abuse, neglect or exploitation of an aged or disabled person are not privileged. Likewise, s. 415.512, F.S., provides that, except for communications made between an attorney and his client pursuant to s. 90.502, F.S., confidential communications applying to situations involving known or suspected child abuse or neglect are not privileged.

B. Effect of Proposed Changes:

This bill amends sections 415.109 and 415.512, F.S., by providing that confidential communications falling within the scope of the "clergyman privilege" (s. 90.505, F.S.), shall remain privileged if that privilege is compelled by the tenets and practices of the particular religious organization or denomination, even if they apply to situations involving: 1) the known or suspected abuse, neglect or exploitation of an aged or disabled person, or 2) known or suspected child abuse or neglect.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.



**B. Government:**

None.

**III. COMMENTS:**

A similar bill, HB 136 (1985), passed the House of Representatives on April 15, 1985. House bill 136 (1985) provides that the exceptions in sections 415.109 and 415.512, F.S., shall be identical to the "clergyman privilege" as enunciated in s. 90.505, F.S. This bill, however, provides that the "clergyman privilege" shall apply only if the privilege "... is compelled by the tenets and practices of the particular religious organization or denomination."

Issues relating to the constitutionality of s. 415.512, F.S. (i.e., "free exercise" clause of the First Amendment), are currently in both federal and state litigation. (See John Doe v. Pingree, Smith & Reno, Case No. 84-2410. (U.S. Dist. Ct. S.D. Fla.); State v. Mellish, Case No. 84-1930 (Fla. 4th DCA).

**IV. AMENDMENTS:**

None.

18/1553

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Skuthan <i>JS</i>	Lester <i>BL</i>	1. JCI	Fav/2 amend.
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Evidentiary Privileges

BILL NO. AND SPONSOR:

SB 994 by  
Senator Dunn

I. SUMMARY:

A. Present Situation:

Sections 90.501-90.510, F.S., provide instances wherein confidential communications between certain individuals are privileged and thus cannot be revealed without the consent of the party in whose benefit the privilege inures.

Section 90.505(2), F.S., provides that certain communications between a clergyman and a person are privileged if such communications are: 1) made privately for the purpose of seeking spiritual counsel and advice from the clergyman, and 2) are not intended for further disclosure. Section 90.505(1), F.S., defines "clergyman" as "... a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church." Ehrhardt, Florida Evidence s. 505.1, p. 241, (2d Ed. 1984), provides that "... self-designated ministers and leaders of sects not usually defined as churches..." do not fall within the definition of "clergyman."

Sections 415.109 and 415.512, F.S., provide exceptions to the traditional privileges enumerated in Chapter 90, F.S. Section 415.109, F.S., provides that, except for communications made between an attorney and his client pursuant to s. 90.502, F.S., confidential communications applying to situations involving the known or suspected abuse, neglect or exploitation of an aged or disabled person are not privileged. Likewise, s. 415.512, F.S., provides that, except for communications made between an attorney and his client pursuant to s. 90.502, F.S., confidential communications applying to situations involving known or suspected child abuse or neglect are not privileged.

B. Effect of Proposed Changes:

This bill amends sections 415.109 and 415.512, F.S., by providing that confidential communications falling within the scope of the "clergyman privilege" (s. 90.505, F.S.), shall remain privileged if that privilege is compelled by the tenets and practices of the particular religious organization or denomination, even if they apply to situations involving: 1) the known or suspected abuse, neglect or exploitation of an aged or disabled person, or 2) known or suspected child abuse or neglect.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

**B. Government:**

None.

**III. COMMENTS:**

A similar bill, HB 136 (1985), passed the House of Representatives on April 15, 1985. House bill 136 (1985) provides that the exceptions in sections 415.109 and 415.512, F.S., shall be identical to the "clergyman privilege" as enunciated in s. 90.505, F.S. This bill, however, provides that the "clergyman privilege" shall apply only if the privilege "... is compelled by the tenets and practices of the particular religious organization or denomination."

Issues relating to the constitutionality of s. 415.512, F.S. (i.e., "free exercise" clause of the First Amendment), are currently in both federal and state litigation. (See John Doe v. Pingree, Smith & Reno, Case No. 84-2410. (U.S. Dist. Ct. S.D. Fla.); State v. Mellish, Case No. 84-1930 (Fla. 4th DCA).

**IV. AMENDMENTS:****Amendment #1 by Judiciary-Civil:**

Deletes amendatory language which had required that the clergyman-client privilege, as provided in s. 90.505, F.S., be compelled by the tenets and practices of the particular religious organization before such privilege would be valid in cases involving the abuse or neglect of aged or disabled persons in order to provide that the privilege of s. 90.505, F.S., without more, is valid in such cases.

**Amendment #2 by Judiciary-Civil:**

Deletes amendatory language which had required that the clergyman-client privilege, as provided in s. 90.505, F.S., be compelled by the tenets and practices of the particular religious organization before such privilege would be valid in cases involving the abuse or neglect of children in order to provide that the privilege of s. 90.505, F.S., without more, is valid in such cases.

SENATE COMMITTEE AMENDMENT

SB 994

No. 1  
(reported favorably)

HB \_\_\_\_\_

The Committee on...Judiciary-Civil....recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Amendment

On page 1....., lines 18-21....., strike and except that protected by the privilege provided in s. 90.505 if that privilege is compelled by the tenets and practices of the particular religious organization or denomination

If amendment is text from another bill insert:

Bill No. \_\_\_\_\_ Draft No. \_\_\_\_\_ With Changes? Yes No \_\_\_\_\_

and insert:

or the privilege provided in s. 90.505

CODING: words stricken are deletions; words underlined are additions.

\*\*\*\*\*

\* Amendment No. 1, taken up by committee: 04-25-85 Adopted X \*  
\* Offered by Senator Dunn Failed \_\_\_\_\_ \*

\*\*\*\*\*

(Amendment No. \_\_\_\_\_ Adopted \_\_\_\_\_ Failed \_\_\_\_\_ Date \_\_/\_\_/\_\_)

SENATE COMMITTEE AMENDMENT

SB 994

No. 2

(reported favorably)

HB \_\_\_\_\_

The Committee on...Judiciary-Civil....recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Amendment

On page 2....., lines 8-11....., strike  
and except that protected by the privilege provided in s.  
90.505 if the privilege is compelled by the tenets and  
practices of the particular religious organization or  
denomination

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No	Yes
			<input type="checkbox"/>	<input type="checkbox"/>

and insert:  
or the privilege provided in s. 90.505

CODING: Words stricken are deletions; words underlined are additions.  
 \*\*\*\*\*  
 \* Amendment No. 2, taken up by committee: 04-25-85 Adopted X \*  
 \* Offered by Senator Dunn Failed    \*  
 \*\*\*\*\*  
 (Amendment No.      Adopted    Failed    Date   /  /  )

18 / 1554

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Skuthan JS</u>	<u>Lester BL</u>	1. <u>JCI</u>	<u>Fav</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Evidentiary Privileges

BILL NO. AND SPONSOR:

HB 136 by  
Representatives Lippman,  
Mills, Canady

I. SUMMARY:

A. Present Situation:

Sections 90.501-90.510, F.S., provide instances wherein confidential communications between certain individuals are privileged and thus cannot be revealed without the consent of the party in whose benefit the privilege inures.

Section 90.505(2), F.S., provides that certain communications between a clergyman and a person are privileged if such communications are: 1) made privately for the purpose of seeking spiritual counsel and advice from the clergyman, and 2) are not intended for further disclosure. Section 90.505(1), F.S., defines "clergyman" as "... a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church." Ehrhardt, Florida Evidence s. 505.1, p. 241, (2d Ed. 1984), provides that "... self-designated ministers and leaders of sects not usually defined as churches..." do not fall within the definition of "clergyman."

Sections 415.109 and 415.512, F.S., provide exceptions to the traditional privileges enumerated in Chapter 90, F.S. Section 415.109, F.S., provides that, except for communications made between an attorney and his client pursuant to s. 90.502, F.S., confidential communications applying to situations involving the known or suspected abuse, neglect or exploitation of an aged or disabled person are not privileged. Likewise, s. 415.512, F.S., provides that, except for communications made between an attorney and his client pursuant to s. 90.502, F.S., confidential communications applying to situations involving known or suspected child abuse or neglect are not privileged.

B. Effect of Proposed Changes:

This bill amends sections 415.109 and 415.512, F.S., by providing that all confidential communications falling within the scope of the "clergyman privilege" (s. 90.505, F.S.), shall remain privileged -- even if such communications apply to situations involving: 1) the known or suspected abuse, neglect or exploitation of an aged or disabled person, or 2) known or suspected child abuse or neglect.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

This bill passed the House of Representatives on April 15, 1985. A bill with identical language, SB 994, with amendments, was reported favorably by the Judiciary-Civil Committee of the Senate on April 25, 1985, and is now on the Senate Calendar.

Issues relating to the constitutionality of s. 415.512, F.S. (i.e., "free exercise" clause of the First Amendment), are currently in both federal and state litigation. [See John Doe v. Pingree, Smith & Reno, Case No. 84-2410 (U.S. Dist. Ct. S.D. Fla.); State v. Mellish, Case No. 84-1930 (Fla. 4th DCA)].

IV. AMENDMENTS:

None.

By Representatives Lippman and Mills

This publication was produced at an average cost of 1.5 cents per single page for the information of members of the Legislature and the public.

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A bill to be entitled  
An act relating to child abuse or neglect;  
amending s. 415.512, F.S., providing that  
communications to clergymen are privileged in  
cases involving child abuse or neglect;  
providing an effective date.

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

Section 1. Section 415.512, Florida Statutes, is amended to read:

415.512 Abrogation of privileged communications in cases involving child abuse or neglect.--The privileged quality of communication between husband and wife and between any professional person and his patient or client, and any other privileged communication except that between attorney and client or to a clergyman, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required by s. 415.504, failure to cooperate with the department in its activities pursuant to ss. 415.502-415.514, or failure to give evidence in any judicial proceeding relating to child abuse or neglect.

Section 2. This act shall take effect October 1, 1985.

\*\*\*\*\*

HOUSE SUMMARY

Provides that communications to clergymen are privileged in cases involving child abuse or neglect.



By Representative Logan

A bill to be entitled

An act relating to child abuse; amending s. 415.503, F.S., expanding the applicability of provisions relating to reports of child abuse or neglect; amending s. 415.504, F.S., adding attorneys and clergymen to the list of persons required to report child abuse or neglect; amending s. 415.512, F.S., changing the scope of privileged communications relating to child abuse or neglect; providing an effective date.

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

Section 1. Subsections (1), (3), (7), and (13) of section 415.503, Florida Statutes, 1984 Supplement, are amended to read:

415.503 Definitions of terms used in ss. 415.502-415.514.--As used in ss. 415.502-415.514:

(1) "Abused or neglected child" means a child whose physical or mental health or welfare is harmed, or threatened with harm, by the acts or omissions of any person ~~the parent or other person responsible for the child's welfare.~~

(3) "Child abuse or neglect" means harm or threatened harm to a child's physical or mental health or welfare by the acts or omissions of any person ~~the parent or other person responsible for the child's welfare.~~

(7) "Harm" to a child's health or welfare can occur when any person ~~the parent or other person responsible for the child's welfare;~~

This publication was produced at an average cost of 1.5 cents per page in compliance with article VI, section 12, of the Florida Constitution.

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1 (a) Inflicts, or allows to be inflicted, upon the  
2 child physical or mental injury, including injury sustained as  
3 a result of excessive corporal punishment;

4 (b) Commits, or allows to be committed, sexual  
5 battery, as defined in chapter 794, against the child or  
6 commits, or allows to be committed, sexual abuse of a child;

7 (c) Exploits a child, or allows a child to be  
8 exploited, as provided in s. 450.151;

9 (d) Abandons the child;

10 (e) Fails to provide the child with supervision or  
11 guardianship by specific acts or omissions of a serious nature  
12 requiring the intervention of the department or the court; or

13 (f) Fails to supply the child with adequate food,  
14 clothing, shelter, or health care, although financially able  
15 to do so or although offered financial or other means to do  
16 so; however, a parent or other person responsible for the  
17 child's welfare legitimately practicing his religious beliefs,  
18 who by reason thereof does not provide specified medical  
19 treatment for a child, may not be considered abusive or  
20 neglectful for that reason alone, but such an exception does  
21 not;

22 1. Eliminate the requirement that such a case be  
23 reported to the department;

24 2. Prevent the department from investigating such a  
25 case; or

26 3. Preclude a court from ordering, when the health of  
27 the child requires it, the provision of medical services by a  
28 physician, as defined herein, or treatment by a duly  
29 accredited practitioner who relies solely on spiritual means  
30 for healing in accordance with the tenets and practices of a  
31 well-recognized church or religious organization.

1 (13) "Physician" means any licensed physician,  
2 psychologist, dentist, podiatrist, or optometrist and includes  
3 any intern or resident.

4 Section 2. Subsection (1) of section 415.504, Florida  
5 Statutes, 1984 Supplement, is amended to read:

6 415.504 Mandatory reports of child abuse or neglect;  
7 mandatory reports of death; abuse registry.--

8 (1) Any person, including, but not limited to, any:

9 (a) Physician, osteopath, medical examiner,  
10 chiropractor, nurse, or hospital personnel engaged in the  
11 admission, examination, care, or treatment of persons;

12 (b) Health or mental health professional other than  
13 one listed in paragraph (a);

14 (c) Practitioner who relies solely on spiritual means  
15 for healing;

16 (d) School teacher or other school official or  
17 personnel;

18 (e) Social worker, day care center worker, or other  
19 professional child care, foster care, residential, or  
20 institutional worker; or

21 (f) Law enforcement officer;

22 (g) Attorney; or

23 (h) Clergyman,  
24

25 who knows, or has reasonable cause to suspect, that a child is  
26 an abused or neglected child shall report such knowledge or  
27 suspicion to the department in the manner prescribed in  
28 subsection (2).

29 Section 3. Section 415.512, Florida Statutes, is  
30 amended to read:  
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1	§15.512 Abrogation of privileged communications in	2.7
2	cases involving child abuse or neglect.--The privileged	2.8
3	quality of communication between husband and wife and between	2.10
4	any professional person and his patient or client, and any	
5	other privileged communication <del>except that between attorney</del>	2.12
6	<del>and client, as such communication relates both to the</del>	
7	<del>competency of the witness and to the exclusion of confidential</del>	2.14
8	<del>communications,</del> shall not apply to any situation involving	
9	known or suspected child abuse or neglect and shall not	2.17
10	constitute grounds for failure to report as required by s.	
11	415.504. failure to cooperate with the department in its	2.19
12	activities pursuant to ss. 415.502-415.514, or failure to give	2.20
13	evidence in any judicial proceeding relating to child abuse or	2.21
14	<u>neglect, provided that any such professional person shall only</u>	2.22
15	<u>be required to report or give evidence of his suspicion of</u>	
16	<u>child abuse or neglect and shall not be required to report or</u>	2.23
17	<u>give evidence concerning an actual admission by any person of</u>	2.24
18	<u>having committed an act of child abuse or neglect.</u>	
19	Section 4. This act shall take effect October 1, 1985.	2.25

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HOUSE SUMMARY

Expands the scope of provisions relating to reports of child abuse or neglect to include abuse or neglect by any person rather than just parents or those responsible for a child's welfare. Includes psychologists, attorneys, and clergymen within the persons listed as being required to report known or suspected victims of child abuse or neglect. Changes the extent of privileged communications in cases involving child abuse or neglect to require disclosure of suspicions of child abuse or neglect but to provide for the confidentiality of an admission of committing such acts.