

State Attorney Fernandez Rundle Meets with Lt. Governor Jeanette Nuñez on Human Trafficking Issues

As part of an ongoing partnership in the fight against Human Trafficking, State Attorney Katherine Fernandez Rundle was honored to host a meeting with the Lt. Governor of Florida, Jeanette Nuñez. They spoke at length about various Human Trafficking issues, including efforts to combat this crime throughout the state.

"I am deeply appreciative of Lt. Gov Nuñez for her strong concern and support of various important initiatives as we work together to eradicate this form of modern-day slavery in our great State of Florida," commented State Attorney Fernandez Rundle. "The only way we can make a significant impact in our law enforcement efforts is to have the necessary laws in place that allow us to ensure traffickers face the consequences of their criminal actions."

One of the issues they discussed was the 2021 Child Witness Protection Act that will be introduced during the upcoming legislative session. This bill is designed to protect child victims and witnesses, individuals with intellectual disabilities, and victims and witnesses of a sexual offense who were under the age of 18 at the time of the offense. The State Attorney previously advocated the need for better protections for vulnerable victims when she participated in a virtual meetings with the Human Trafficking Council Subcommittee, Lt. Governor Nuñez, and state lawmakers in December 2020.

The Child Witness Protection Act would protect vulnerable victims by eliminating automatic discovery depositions.

A discovery deposition is an exploratory examination conducted by an adverse party prior to trial and is almost never conducted in the presence of a judge. Since it is inherently adversarial, it creates a setting of re-experiencing distressing memories through invasive, explicit, and detailed questioning. This can trigger trauma and can also cause an additional trauma to the individual being deposed. Currently, attorneys can take the depositions of even vulnerable victims in criminal cases, as well as abuse, abandonment, and neglect proceedings under Chapter 39, Florida Statutes.

The Child Witness Protection Act would require attorneys to show they actually need to depose these sensitive witnesses and obtain court permission to do so.

Depositions are not constitutionally required and only five other states (Indiana, Iowa, Missouri, North Dakota and Vermont) permit criminal discovery depositions by right without leave of court. North Dakota recently granted victims the right to refuse to participate in a deposition requested by a defendant or a defendant's attorney, and Vermont has protected minor victims of sexual assault from deposition since 2009. Moreover, the American Bar Association's national standards do not recommend the use of discovery depositions in criminal cases as a right.

Florida's current discovery deposition rule that allows automatic deposition for these vulnerable victims is antiquated and harmful. It was enacted in the 1970's, well before the era of neuroscience research on trauma and its effects on the brain, including the developing brain of a child.

Neuroscience has since dramatically improved our understanding of brain development and the physiological effects of trauma and toxic stress. A deposition can be frightening and humiliating for any victim, let alone children.

We now understand that the invasive, explicit, and detailed questioning of a deposition can cause a witness to relive a traumatic event which causes the release of stress hormones that can trigger the body's fight, flight, or freeze response.

It is well recognized that this physiological response can impair the ability to focus, recall, and verbalize. And this is especially true when you have child victims and witnesses who are particularly vulnerable in deposition settings. They often don't have the language, insight, or empowerment to deal with their emotions and ask for help when distressed. Lawyers are not trained to understand and fully assess whether a child is being harmed, traumatized, or damaged during the deposition.

In addition, Florida's discovery deposition process requires the videotaping of all depositions of minors and-at the request of either party, the videotaping of sensitive witnesses. And although the original intent behind this was as a protection, videotaping in the digital age renders the process more vulnerable to being uploaded and shared worldwide on the Internet.

Currently, Florida Statute 92.55 permits protection from depositions only for victims or witnesses under the age of 18, persons who have an intellectual disability or a sexual offense victim or witness, upon a showing of severe emotional or mental harm due to the presence of the defendant.

Prior to 1989, an earlier version of Criminal Procedure Rule 3.220 used the "presence of the defendant" language and permitted defendants to be present during criminal discovery depositions. In order to fulfill the requirement to show "severe emotional or mental harm", victims and witnesses have to be submitted for psychological examinations. The results of these evaluations are then disclosed to the opposing party prior to a judicial hearing.

Should any confidentially-protected abuse, abandonment, or neglect records or mental health records be relied upon by the forensic psychologist, they also become part of discovery materials. Thus, in order to attempt to protect a witness, the privacy of the witness is required to be invaded.

The solution to this is amending Florida Statute 92.55 to prohibit depositions of victims or witnesses under the age of 18, persons with intellectual disabilities, or sexual offense victims or witnesses except upon a showing of good cause in the following proceedings: murder; manslaughter; sexual battery; lewd and lascivious offenses; computer pornography offenses; human trafficking; kidnapping; false imprisonment; aggravated cyberstalking; child abuse and child neglect; use of child in sexual performance; domestic violence; and abuse, abandonment, and neglect of children under chapter 39.

“This proposed amendment will promote the physical and mental well-being for child victims,” said State Attorney Fernandez Rundle. “The fiscal impact will be minor yet the impact on the lives of the most vulnerable of victims and their recovery will be priceless.”