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1 A bill to be entitled
2 An act relating to offenses involving minors and
3 vulnerable persons; amending ss. 92.53 and 92.54,
4 F.S.; increasing the maximum age at which a victim or
5 witness under may be allowed to testify via closed
6 circuit television rather than in a courtroom in
7 certain circumstances; amending s. 92.55, F.S.;
8 revising the definition of the term "sexual offense
9 victim or witness"; increasing the maximum age of
10 victims and witnesses for whom the court may enter
11 protective orders; authorizing certain advocates to
12 file motions for such orders on behalf of certain
13 persons; amending s. 741.281, F.S.; requiring a court
14 to order that a defendant attend and complete a
15 parenting course if domestic violence was committed
16 upon or in the presence of a child; amending s.
17 782.04, F.S.; including human trafficking as an
18 underlying felony offense to support a felony murder
19 conviction; amending s. 787.06, F.S.; prohibiting
20 certain defenses to prosecution under certain
21 circumstances; amending s. 794.022, F.S.; including
22 human trafficking and lewd and lascivious offenses in
23 the rules of evidence applicable to sexually-related
24 offenses; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 92.53, Florida Statutes, is amended to
29 read:

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30 92.53 Videotaping the testimony of a victim or witness
31 under age 18 ~~16~~ or who has an intellectual disability.—

32 (1) On motion and hearing in camera and a finding that
33 there is a substantial likelihood that a victim or witness who
34 is under the age of 18 ~~16~~ or who has an intellectual disability
35 as defined in s. 393.063 would suffer at least moderate
36 emotional or mental harm due to the presence of the defendant if
37 such victim or witness is required to testify in open court, or
38 is unavailable as defined in s. 90.804(1), the trial court may
39 order the videotaping of the testimony of the victim or witness
40 in a case, whether civil or criminal in nature, in which
41 videotaped testimony is to be used at trial in lieu of trial
42 testimony in open court.

43 (2) The motion may be filed by:

44 (a) The victim or witness, or the victim's or witness's
45 attorney, parent, legal guardian, or guardian ad litem;

46 (b) A trial judge on his or her own motion;

47 (c) Any party in a civil proceeding; or

48 (d) The prosecuting attorney or the defendant, or the
49 defendant's counsel.

50 (3) The judge shall preside, or shall appoint a special
51 master to preside, at the videotaping unless:

52 (a) The child or the person who has the intellectual
53 disability is represented by a guardian ad litem or counsel;

54 (b) The representative of the victim or witness and the
55 counsel for each party stipulate that the requirement for the
56 presence of the judge or special master may be waived; and

57 (c) The court finds at a hearing on the motion that the
58 presence of a judge or special master is not necessary to

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59 protect the victim or witness.

60 (4) The defendant and the defendant's counsel must be
61 present at the videotaping unless the defendant has waived this
62 right. The court may require the defendant to view the testimony
63 from outside the presence of the child or the person who has an
64 intellectual disability by means of a two-way mirror or another
65 similar method that ensures that the defendant can observe and
66 hear the testimony of the victim or witness in person, but the
67 victim or witness cannot hear or see the defendant. The
68 defendant and the attorney for the defendant may communicate by
69 any appropriate private method.

70 (5) Any party, or the court on its own motion, may request
71 the aid of an interpreter, as provided in s. 90.606, to aid the
72 parties in formulating methods of questioning the child or
73 person who has the intellectual disability and in interpreting
74 the answers of the child or person during proceedings conducted
75 under this section.

76 (6) The motion referred to in subsection (1) may be made at
77 any time with reasonable notice to each party to the cause, and
78 videotaping of testimony may be made any time after the court
79 grants the motion. The videotaped testimony is admissible as
80 evidence in the trial of the cause; however, such testimony is
81 not admissible in any trial or proceeding in which such witness
82 testifies by use of closed circuit television pursuant to s.
83 92.54.

84 (7) The court shall make specific findings of fact, on the
85 record, as to the basis for its ruling under this section.

86 Section 2. Section 92.54, Florida Statutes, is amended to
87 read:

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88 92.54 Use of closed circuit television in proceedings
89 involving a victim or witness under the age of 18 ~~16~~ or who has
90 an intellectual disability.-

91 (1) Upon motion and hearing in camera and upon a finding
92 that there is a substantial likelihood that a victim or witness
93 under the age of 18 ~~16~~ or who has an intellectual disability
94 will suffer at least moderate emotional or mental harm due to
95 the presence of the defendant if such victim or witness is
96 required to testify in open court, or is unavailable as defined
97 in s. 90.804(1), the trial court may order that the testimony of
98 the victim or witness be taken outside of the courtroom and
99 shown by means of closed circuit television.

100 (2) The motion may be filed by the victim or witness; the
101 attorney, parent, legal guardian, or guardian ad litem of the
102 victim or witness; the prosecutor; the defendant or the
103 defendant's counsel; or the trial judge on his or her own
104 motion.

105 (3) Only the judge, the prosecutor, the defendant, the
106 attorney for the defendant, the operators of the videotape
107 equipment, an interpreter, and some other person who, in the
108 opinion of the court, contributes to the well-being of the child
109 or the person who has an intellectual disability and who will
110 not be a witness in the case may be in the room during the
111 recording of the testimony.

112 (4) During the victim's or witness's testimony by closed
113 circuit television, the court may require the defendant to view
114 the testimony from the courtroom. In such a case, the court
115 shall permit the defendant to observe and hear the testimony of
116 the victim or witness, but must ensure that the victim or

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117 witness cannot hear or see the defendant. The defendant's right
118 to assistance of counsel, which includes the right to immediate
119 and direct communication with counsel conducting cross-
120 examination, must be protected and, upon the defendant's
121 request, such communication must be provided by any appropriate
122 electronic method.

123 (5) The court shall make specific findings of fact, on the
124 record, as to the basis for its ruling under this section.

125 Section 3. Section 92.55, Florida Statutes, is amended to
126 read:

127 92.55 Judicial or other proceedings involving victim or
128 witness under the age of 18 ~~16~~, a person who has an intellectual
129 disability, or a sexual offense victim or witness; special
130 protections; use of registered service or therapy animals.-

131 (1) For purposes of this section, the term:

132 (a) "Sexual offense victim or witness" means a person who
133 was under the age of 18 ~~16~~ when he or she was the victim of or a
134 witness to a sexual offense.

135 (b) "Sexual offense" means any offense specified in s.
136 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

137 (2) Upon motion of any party, upon motion of a parent,
138 guardian, attorney, ~~or~~ guardian ad litem, or other advocate
139 appointed by the court under s. 914.17 for a victim or witness
140 under the age of 18 ~~16~~, a person who has an intellectual
141 disability, or a sexual offense victim or witness, or upon its
142 own motion, the court may enter any order necessary to protect
143 the victim or witness in any judicial proceeding or other
144 official proceeding from severe emotional or mental harm due to
145 the presence of the defendant if the victim or witness is

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146 required to testify in open court. Such orders must relate to
147 the taking of testimony and include, but are not limited to:

148 (a) Interviewing or the taking of depositions as part of a
149 civil or criminal proceeding.

150 (b) Examination and cross-examination for the purpose of
151 qualifying as a witness or testifying in any proceeding.

152 (c) The use of testimony taken outside of the courtroom,
153 including proceedings under ss. 92.53 and 92.54.

154 (3) In ruling upon the motion, the court shall consider:

155 (a) The age of the child, the nature of the offense or act,
156 the relationship of the child to the parties in the case or to
157 the defendant in a criminal action, the degree of emotional
158 trauma that will result to the child as a consequence of the
159 defendant's presence, and any other fact that the court deems
160 relevant;

161 (b) The age of the person who has an intellectual
162 disability, the functional capacity of such person, the nature
163 of the offenses or act, the relationship of the person to the
164 parties in the case or to the defendant in a criminal action,
165 the degree of emotional trauma that will result to the person as
166 a consequence of the defendant's presence, and any other fact
167 that the court deems relevant; or

168 (c) The age of the sexual offense victim or witness when
169 the sexual offense occurred, the relationship of the sexual
170 offense victim or witness to the parties in the case or to the
171 defendant in a criminal action, the degree of emotional trauma
172 that will result to the sexual offense victim or witness as a
173 consequence of the defendant's presence, and any other fact that
174 the court deems relevant.

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175 (4) In addition to such other relief provided by law, the
176 court may enter orders limiting the number of times that a
177 child, a person who has an intellectual disability, or a sexual
178 offense victim or witness may be interviewed, prohibiting
179 depositions of the victim or witness, requiring the submission
180 of questions before the examination of the victim or witness,
181 setting the place and conditions for interviewing the victim or
182 witness or for conducting any other proceeding, or permitting or
183 prohibiting the attendance of any person at any proceeding. The
184 court shall enter any order necessary to protect the rights of
185 all parties, including the defendant in any criminal action.

186 (5) The court may set any other conditions it finds just
187 and appropriate when taking the testimony of a child victim or
188 witness or a sexual offense victim or witness, including the use
189 of a service or therapy animal that has been evaluated and
190 registered according to national standards, in any proceeding
191 involving a sexual offense. When deciding whether to permit a
192 child victim or witness or sexual offense victim or witness to
193 testify with the assistance of a registered service or therapy
194 animal, the court shall consider the age of the child victim or
195 witness, the age of the sexual offense victim or witness at the
196 time the sexual offense occurred, the interests of the child
197 victim or witness or sexual offense victim or witness, the
198 rights of the parties to the litigation, and any other relevant
199 factor that would facilitate the testimony by the child victim
200 or witness or sexual offense victim or witness.

201 Section 4. Section 741.281, Florida Statutes, is amended to
202 read:

203 741.281 Court to order batterers' intervention program

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204 attendance.—If a person is found guilty of, has adjudication
205 withheld on, or pleads nolo contendere to a crime of domestic
206 violence, as defined in s. 741.28, that person shall be ordered
207 by the court to a minimum term of 1 year's probation and the
208 court shall order that the defendant attend and complete a
209 batterers' intervention program and, if a crime of domestic
210 violence was committed upon or in the presence of a child, a
211 parenting course as a condition of probation. The court must
212 impose the condition of the batterers' intervention program and
213 parenting course for a defendant under this section, but the
214 court, in its discretion, may determine not to impose the
215 condition if it states on the record why a batterers'
216 intervention program and the parenting course might be
217 inappropriate. The court must impose the condition of the
218 batterers' intervention program for a defendant placed on
219 probation unless the court determines that the person does not
220 qualify for the batterers' intervention program pursuant to s.
221 741.325. The imposition of probation under this section does not
222 preclude the court from imposing any sentence of imprisonment
223 authorized by s. 775.082.

224 Section 5. Subsections (1), (3), and (4) of section 782.04,
225 Florida Statutes, are amended to read:

226 782.04 Murder.—

227 (1) (a) The unlawful killing of a human being:

228 1. When perpetrated from a premeditated design to effect
229 the death of the person killed or any human being;

230 2. When committed by a person engaged in the perpetration
231 of, or in the attempt to perpetrate, any:

232 a. Trafficking offense prohibited by s. 893.135(1),

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233 b. Arson,
234 c. Sexual battery,
235 d. Robbery,
236 e. Burglary,
237 f. Kidnapping,
238 g. Escape,
239 h. Aggravated child abuse,
240 i. Aggravated abuse of an elderly person or disabled adult,
241 j. Aircraft piracy,
242 k. Unlawful throwing, placing, or discharging of a
243 destructive device or bomb,
244 l. Carjacking,
245 m. Home-invasion robbery,
246 n. Aggravated stalking,
247 o. Murder of another human being,
248 p. Resisting an officer with violence to his or her person,
249 q. Aggravated fleeing or eluding with serious bodily injury
250 or death,
251 r. Felony that is an act of terrorism or is in furtherance
252 of an act of terrorism, ~~or~~
253 s. Human trafficking, or
254 3. Which resulted from the unlawful distribution of any
255 substance controlled under s. 893.03(1), cocaine as described in
256 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
257 compound, derivative, or preparation of opium, or methadone by a
258 person 18 years of age or older, when such drug is proven to be
259 the proximate cause of the death of the user,
260
261 is murder in the first degree and constitutes a capital felony,

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262 punishable as provided in s. 775.082.

263 (b) In all cases under this section, the procedure set
264 forth in s. 921.141 shall be followed in order to determine
265 sentence of death or life imprisonment.

266 (3) When a human being is killed during the perpetration
267 of, or during the attempt to perpetrate, any:

268 (a) Trafficking offense prohibited by s. 893.135(1),

269 (b) Arson,

270 (c) Sexual battery,

271 (d) Robbery,

272 (e) Burglary,

273 (f) Kidnapping,

274 (g) Escape,

275 (h) Aggravated child abuse,

276 (i) Aggravated abuse of an elderly person or disabled
277 adult,

278 (j) Aircraft piracy,

279 (k) Unlawful throwing, placing, or discharging of a
280 destructive device or bomb,

281 (l) Carjacking,

282 (m) Home-invasion robbery,

283 (n) Aggravated stalking,

284 (o) Murder of another human being,

285 (p) Aggravated fleeing or eluding with serious bodily
286 injury or death,

287 (q) Resisting an officer with violence to his or her
288 person, ~~or~~

289 (r) Felony that is an act of terrorism or is in furtherance
290 of an act of terrorism, or

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291 (s) Human trafficking,
292
293 by a person other than the person engaged in the perpetration of
294 or in the attempt to perpetrate such felony, the person
295 perpetrating or attempting to perpetrate such felony commits
296 murder in the second degree, which constitutes a felony of the
297 first degree, punishable by imprisonment for a term of years not
298 exceeding life or as provided in s. 775.082, s. 775.083, or s.
299 775.084.

300 (4) The unlawful killing of a human being, when perpetrated
301 without any design to effect death, by a person engaged in the
302 perpetration of, or in the attempt to perpetrate, any felony
303 other than any:

- 304 (a) Trafficking offense prohibited by s. 893.135(1),
305 (b) Arson,
306 (c) Sexual battery,
307 (d) Robbery,
308 (e) Burglary,
309 (f) Kidnapping,
310 (g) Escape,
311 (h) Aggravated child abuse,
312 (i) Aggravated abuse of an elderly person or disabled
313 adult,
314 (j) Aircraft piracy,
315 (k) Unlawful throwing, placing, or discharging of a
316 destructive device or bomb,
317 (l) Unlawful distribution of any substance controlled under
318 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or
319 opium or any synthetic or natural salt, compound, derivative, or

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320 preparation of opium by a person 18 years of age or older, when
321 such drug is proven to be the proximate cause of the death of
322 the user,

323 (m) Carjacking,

324 (n) Home-invasion robbery,

325 (o) Aggravated stalking,

326 (p) Murder of another human being,

327 (q) Aggravated fleeing or eluding with serious bodily
328 injury or death,

329 (r) Resisting an officer with violence to his or her
330 person, ~~or~~

331 (s) Felony that is an act of terrorism or is in furtherance
332 of an act of terrorism, or

333 (t) Human trafficking,

334

335 is murder in the third degree and constitutes a felony of the
336 second degree, punishable as provided in s. 775.082, s. 775.083,
337 or s. 775.084.

338 Section 6. Subsection (10) is added to section 787.06,
339 Florida Statutes, to read:

340 787.06 Human trafficking.—

341 (10) A victim's lack of chastity or the willingness or
342 consent of a victim is not a defense to prosecution under this
343 section if the victim was under 18 years of age at the time of
344 the offense.

345 Section 7. Section 794.022, Florida Statutes, is amended to
346 read:

347 794.022 Rules of evidence.—

348 (1) The testimony of the victim need not be corroborated in

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349 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

350 (2) Specific instances of prior consensual sexual activity
351 between the victim and any person other than the offender may
352 ~~shall~~ not be admitted into evidence in a prosecution under s.
353 787.06, s. 794.011, or s. 800.04. However, such evidence may be
354 admitted if it is first established to the court in a proceeding
355 in camera that such evidence may prove that the defendant was
356 not the source of the semen, pregnancy, injury, or disease; or,
357 when consent by the victim is at issue, such evidence may be
358 admitted if it is first established to the court in a proceeding
359 in camera that such evidence tends to establish a pattern of
360 conduct or behavior on the part of the victim which is so
361 similar to the conduct or behavior in the case that it is
362 relevant to the issue of consent.

363 (3) Notwithstanding any other provision of law, reputation
364 evidence relating to a victim's prior sexual conduct or evidence
365 presented for the purpose of showing that manner of dress of the
366 victim at the time of the offense incited the sexual battery may
367 ~~shall~~ not be admitted into evidence in a prosecution under s.
368 787.06, s. 794.011, or s. 800.04.

369 (4) When consent of the victim is a defense to prosecution
370 under s. 787.06, s. 794.011, or s. 800.04, evidence of the
371 victim's mental incapacity or defect is admissible to prove that
372 the consent was not intelligent, knowing, or voluntary; and the
373 court shall instruct the jury accordingly.

374 (5) An offender's use of a prophylactic device, or a
375 victim's request that an offender use a prophylactic device, is
376 not, by itself, relevant to either the issue of whether or not
377 the offense was committed or the issue of whether or not the

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378 victim consented.

379 Section 8. This act shall take effect July 1, 2016.