

By Senator Flores

37-01400-16

20161382__

1 A bill to be entitled
2 An act relating to victim and witness protection;
3 amending ss. 92.53 and 92.54, F.S.; increasing the
4 maximum age of victims and witnesses for whom the
5 court may order the use of videotaped testimony and
6 closed circuit television in court proceedings in lieu
7 of testifying in open court; 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. 794.022, F.S.; revising the
14 corroboration requirements for certain victim
15 testimony and the admissibility of certain evidence in
16 prosecutions to include specified human trafficking
17 and lewd or lascivious offenses; reenacting s.
18 90.404(1)(b), F.S., relating to character evidence, to
19 incorporate the amendment made to s. 794.022, F.S., in
20 a reference thereto; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 92.53, Florida Statutes, is amended to
25 read:

26 92.53 Videotaping the testimony of a victim or witness
27 under age 18 ~~16~~ or who has an intellectual disability.—

28 (1) On motion and hearing in camera and a finding that
29 there is a substantial likelihood that a victim or witness who
30 is under the age of 18 ~~16~~ or who has an intellectual disability
31 as defined in s. 393.063 would suffer at least moderate
32 emotional or mental harm due to the presence of the defendant if

37-01400-16

20161382__

33 such victim or witness is required to testify in open court, or
34 is unavailable as defined in s. 90.804(1), the trial court may
35 order the videotaping of the testimony of the victim or witness
36 in a case, whether civil or criminal in nature, in which
37 videotaped testimony is to be used at trial in lieu of trial
38 testimony in open court.

39 (2) The motion may be filed by:

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

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

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

44 (d) The prosecuting attorney or the defendant, or the
45 defendant's counsel.

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

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

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

53 (c) The court finds at a hearing on the motion that the
54 presence of a judge or special master is not necessary to
55 protect the victim or witness.

56 (4) The defendant and the defendant's counsel must be
57 present at the videotaping unless the defendant has waived this
58 right. The court may require the defendant to view the testimony
59 from outside the presence of the child or the person who has an
60 intellectual disability by means of a two-way mirror or another
61 similar method that ensures that the defendant can observe and

37-01400-16

20161382__

62 hear the testimony of the victim or witness in person, but the
63 victim or witness cannot hear or see the defendant. The
64 defendant and the attorney for the defendant may communicate by
65 any appropriate private method.

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

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

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

82 Section 2. Section 92.54, Florida Statutes, is amended to
83 read:

84 92.54 Use of closed circuit television in proceedings
85 involving a victim or witness under the age of 18 ~~16~~ or who has
86 an intellectual disability.—

87 (1) Upon motion and hearing in camera and upon a finding
88 that there is a substantial likelihood that a victim or witness
89 under the age of 18 ~~16~~ or who has an intellectual disability
90 will suffer at least moderate emotional or mental harm due to

37-01400-16

20161382__

91 the presence of the defendant if such victim or witness is
92 required to testify in open court, or is unavailable as defined
93 in s. 90.804(1), the trial court may order that the testimony of
94 the victim or witness be taken outside of the courtroom and
95 shown by means of closed circuit television.

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

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

108 (4) During the victim's or witness's testimony by closed
109 circuit television, the court may require the defendant to view
110 the testimony from the courtroom. In such a case, the court
111 shall permit the defendant to observe and hear the testimony of
112 the victim or witness, but must ensure that the victim or
113 witness cannot hear or see the defendant. The defendant's right
114 to assistance of counsel, which includes the right to immediate
115 and direct communication with counsel conducting cross-
116 examination, must be protected and, upon the defendant's
117 request, such communication must be provided by any appropriate
118 electronic method.

119 (5) The court shall make specific findings of fact, on the

37-01400-16

20161382__

120 record, as to the basis for its ruling under this section.

121 Section 3. Section 92.55, Florida Statutes, is amended to
122 read:

123 92.55 Judicial or other proceedings involving victim or
124 witness under the age of 18 ~~16~~, a person who has an intellectual
125 disability, or a sexual offense victim or witness; special
126 protections; use of registered service or therapy animals.-

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

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

131 (b) "Sexual offense" means any offense specified in s.
132 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

133 (2) Upon motion of any party, upon motion of a parent,
134 guardian, attorney, ~~or~~ guardian ad litem, or other advocate
135 appointed by the court under s. 914.17 for a victim or witness
136 under the age of 18 ~~16~~, a person who has an intellectual
137 disability, or a sexual offense victim or witness, or upon its
138 own motion, the court may enter any order necessary to protect
139 the victim or witness in any judicial proceeding or other
140 official proceeding from severe emotional or mental harm due to
141 the presence of the defendant if the victim or witness is
142 required to testify in open court. Such orders must relate to
143 the taking of testimony and include, but are not limited to:

144 (a) Interviewing or the taking of depositions as part of a
145 civil or criminal proceeding.

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

148 (c) The use of testimony taken outside of the courtroom,

37-01400-16

20161382__

149 including proceedings under ss. 92.53 and 92.54.

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

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

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

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

171 (4) In addition to such other relief provided by law, the
172 court may enter orders limiting the number of times that a
173 child, a person who has an intellectual disability, or a sexual
174 offense victim or witness may be interviewed, prohibiting
175 depositions of the victim or witness, requiring the submission
176 of questions before the examination of the victim or witness,
177 setting the place and conditions for interviewing the victim or

37-01400-16

20161382__

178 witness or for conducting any other proceeding, or permitting or
179 prohibiting the attendance of any person at any proceeding. The
180 court shall enter any order necessary to protect the rights of
181 all parties, including the defendant in any criminal action.

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

197 Section 4. Subsections (1) through (4) of section 794.022,
198 Florida Statutes, are amended to read:

199 794.022 Rules of evidence.—

200 (1) The testimony of the victim need not be corroborated in
201 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

202 (2) Specific instances of prior consensual sexual activity
203 between the victim and any person other than the offender shall
204 not be admitted into evidence in a prosecution under s. 787.06,
205 s. 794.011, or s. 800.04. However, such evidence may be admitted
206 if it is first established to the court in a proceeding in

37-01400-16

20161382__

207 camera that such evidence may prove that the defendant was not
208 the source of the semen, pregnancy, injury, or disease; or, when
209 consent by the victim is at issue, such evidence may be admitted
210 if it is first established to the court in a proceeding in
211 camera that such evidence tends to establish a pattern of
212 conduct or behavior on the part of the victim which is so
213 similar to the conduct or behavior in the case that it is
214 relevant to the issue of consent.

215 (3) Notwithstanding any other provision of law, reputation
216 evidence relating to a victim's prior sexual conduct or evidence
217 presented for the purpose of showing that manner of dress of the
218 victim at the time of the offense incited the offense ~~sexual~~
219 ~~battery~~ shall not be admitted into evidence in a prosecution
220 under s. 787.06, s. 794.011, or s. 800.04.

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

226 Section 5. For the purpose of incorporating the amendment
227 made by this act to section 794.022, Florida Statutes, in a
228 reference thereto, paragraph (b) of subsection (1) of section
229 90.404, Florida Statutes, is reenacted to read:

230 90.404 Character evidence; when admissible.—

231 (1) CHARACTER EVIDENCE GENERALLY.—Evidence of a person's
232 character or a trait of character is inadmissible to prove
233 action in conformity with it on a particular occasion, except:

234 (b) *Character of victim.*—

235 1. Except as provided in s. 794.022, evidence of a

37-01400-16

20161382__

236 pertinent trait of character of the victim of the crime offered
237 by an accused, or by the prosecution to rebut the trait; or

238 2. Evidence of a character trait of peacefulness of the
239 victim offered by the prosecution in a homicide case to rebut
240 evidence that the victim was the aggressor.

241 Section 6. This act shall take effect July 1, 2016.