

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 634

INTRODUCER: Senator Benacquisto

SUBJECT: Sexual Offense Victim or Witness Testimony

DATE: January 29, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	FP	_____

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**I. Summary:**

SB 634 amends s. 92.53 F.S., and s. 92.54, F.S., to authorize the trial court to order videotaping or closed circuit testimony of victims of sexual battery. The bill also amends the definition of “sexual offense victim or witness” in s. 92.55, F.S., to eliminate the 16 year old cut-off age for eligibility for court protective orders.

The bill becomes effective July 1, 2016.

**II. Present Situation:**

Florida law currently contains a constitutional provision and several statutes providing for certain treatment of victims and witnesses.<sup>1</sup> A number of these statutes authorize the court to provide special protections to a victim or witness who is under 16 years of age or who has an intellectual disability or to a victim or witness of a sexual offense who is under 16 years of age.

Sections 92.53 and 92.54, F.S., authorize a court to enter a protective order after a motion and hearing in camera<sup>2</sup> if the court finds that the protected individual is a victim or witness who is under the age of 16 or has an intellectual disability,<sup>3</sup> and that:

- It is substantially likely the protected individual would suffer at least moderate emotional or mental harm due to the presence of the defendant if the protected individual were required to testify in open court; or

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<sup>1</sup> See, e.g., FLA. CONST. art. I, s. 16; ss. 92.53-55, F.S.; s. 914.25, F.S.; s. 914.27.

<sup>2</sup> A hearing “in camera” means the hearing is held in the judge’s chambers or held in a courtroom where all spectators are excluded from being present. DUHAIME’S LAW DICTIONARY, *In Camera Definition*, <http://www.duhaime.org/LegalDictionary/I/InCamera.aspx> (last visited Jan. 14, 2016).

<sup>3</sup> Under the procedure provided in s. 92.53, F.S., “intellectual disability” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. s. 393.063, F.S.

- The court determines that the protected individual is unavailable<sup>4</sup> to testify.

When the above circumstances are met, the court has several options. The court may order the protected individual's testimony be videotaped and used in lieu of testimony in open court.<sup>5</sup> In the event of such an order, the defendant and the defendant's counsel must be permitted to be present at any videotaping, but the court may order the defendant to view the testimony from outside the presence of the protected individual.<sup>6</sup> Alternatively, the court may require that the protected individual's testimony be taken outside the courtroom and shown in the courtroom by means of closed circuit television.<sup>7</sup> Only the specified parties<sup>8</sup> may be permitted in the room when the testimony is recorded.<sup>9</sup> The judge may require the defendant to view the testimony from the courtroom, but must permit the defendant to observe and hear the person's testimony.<sup>10</sup>

Section 92.55, F.S., authorizes the court to enter a wide variety of protective orders to protect victims and witnesses under 16 years of age, sexual offense<sup>11</sup> victims or witnesses under 16 years of age,<sup>12</sup> and persons with an intellectual disability.<sup>13</sup> A motion for protection can be raised by any party to the case, a parent, a guardian, an attorney, a guardian ad litem, or the court.<sup>14</sup> The court is required to consider a lengthy list of factors, including, but not limited to the age of the person, the nature of the offense, and the functional capacity of the person if he or she has an intellectual disability.<sup>15</sup>

The court may enter orders taking the following actions, in addition to any other relief available under the law:

- Limit the number of times that the person may be interviewed;
- Prohibit depositions of the person;
- Require the submission of questions prior to examination of the person;
- Set the place and conditions for interviewing the person or for other proceedings;
- Permit or prohibit the attendance of any person at a proceeding; and

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<sup>4</sup> A witness or potential witness is considered unavailable to testify when he or she: 1) Is exempted from testifying by a ruling of a court due to a legal privilege; 2) Refuses to testify concerning the subject matter of his or her statement despite a court order to testify; 3) Has suffered a lack of memory of the subject matter of his or her statement; 4) Is unable to be present or to testify at the hearing because of death, illness or infirmity; or 5) Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance by reasonable means. s. 90.804(1), F.S.

<sup>5</sup> Section 92.53(1), F.S.

<sup>6</sup> Section 92.53(4), F.S.

<sup>7</sup> Section 92.54(1), F.S.

<sup>8</sup> Only the judge, prosecutor, the defendant and his or her attorney, any video equipment operators, and interpreter, or any other person who is not going to be a witness in the case and, in the opinion of the court, benefits the well-being of the protected individual. s. 92.54(3), F.S.

<sup>9</sup> Section 92.54(3), F.S.

<sup>10</sup> Section 92.54(4), F.S.

<sup>11</sup> "Sexual offense" means any offense specified in s. 775.21(4)(a)1., F.S. (Sexual Predator criteria), or s. 943.0435(1)(a)1.a.(I), F.S. (Sexual Offender criteria).

<sup>12</sup> A "sexual offense victim or witness" means a person who was under 16 years old when he or she was the victim of or a witness to a sexual offense. s. 92.55(1)(a), F.S.

<sup>13</sup> Section 92.55(1)(b), F.S.

<sup>14</sup> Section 92.55(2), F.S.

<sup>15</sup> Section 92.55(3), F.S.

- Permit the use of a service animal during the person's testimony in any sexual offense proceeding.<sup>16</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 92.53 F.S., and s. 92.54, F.S., to authorize the trial court to order the videotaping or the closed circuit testimony of victims of sexual battery.

The bill amends the definition of "sexual offense victim or witness" in s. 92.55, F.S., to eliminate the 16 year old cut-off age for eligibility for court protective orders.

The bill becomes effective on July 1, 2016.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

To the extent to which the court orders the videotape and closed circuit television authorized in the bill, there may be additional costs incurred by the court.

### **VI. Technical Deficiencies:**

None.

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<sup>16</sup> Section 92.55(4) and (5), F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 92.53, 92.54, and 92.55.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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