

By Senator Benacquisto

30-00590-16

2016634__

1 A bill to be entitled
2 An act relating to sexual offense victim or witness
3 testimony; amending s. 92.53, F.S.; authorizing a
4 trial court to order the videotaping of the testimony
5 of a victim of sexual battery under certain
6 circumstances; expanding who may stipulate that the
7 requirement for the presence of the judge at the
8 videotaping of testimony may be waived; amending s.
9 92.54, F.S.; authorizing a trial court to order the
10 use of closed circuit television in proceedings
11 involving a victim of sexual battery under certain
12 circumstances; permitting certain persons to be
13 present in the room during the recording of testimony;
14 amending s. 92.55, F.S.; redefining the term "sexual
15 offense victim or witness"; conforming provisions to
16 changes made by the act; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 92.53, Florida Statutes, is amended to
21 read:

22 92.53 Videotaping the testimony of a victim of sexual
23 battery, a victim or witness under age 16, or a victim or
24 witness who has an intellectual disability.—

25 (1) On motion and hearing in camera and a finding that
26 there is a substantial likelihood that a victim of sexual
27 battery or a victim or witness who is under the age of 16 or who
28 has an intellectual disability as defined in s. 393.063 would
29 suffer at least moderate emotional or mental harm due to the

30-00590-16

2016634__

30 presence of the defendant if such victim or witness is required
31 to testify in open court, or is unavailable as defined in s.
32 90.804(1), the trial court may order the videotaping of the
33 testimony of the victim or witness in a case, whether civil or
34 criminal in nature, in which videotaped testimony is to be used
35 at trial in lieu of trial testimony in open court.

36 (2) The motion may be filed by:

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

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

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

41 (d) The prosecuting attorney or the defendant, or the
42 defendant's counsel.

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

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

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

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

54 (4) The defendant and the defendant's counsel must be
55 present at the videotaping unless the defendant has waived this
56 right. The court may require the defendant to view the testimony
57 from outside the presence of the victim of sexual battery, the
58 child, or the person who has an intellectual disability by means

30-00590-16

2016634__

59 of a two-way mirror or another similar method that ensures that
60 the defendant can observe and hear the testimony of the victim
61 or witness in person, but the victim or witness cannot hear or
62 see the defendant. The defendant and the attorney for the
63 defendant may communicate by any appropriate private method.

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

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

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

80 Section 2. Section 92.54, Florida Statutes, is amended to
81 read:

82 92.54 Use of closed circuit television in proceedings
83 involving a victim of sexual battery, a victim or witness under
84 the age of 16, or a victim or witness who has an intellectual
85 disability.-

86 (1) Upon motion and hearing in camera and upon a finding
87 that there is a substantial likelihood that a victim of sexual

30-00590-16

2016634__

88 battery, a victim or witness under the age of 16, or a victim or
89 witness who has an intellectual disability will suffer at least
90 moderate emotional or mental harm due to the presence of the
91 defendant if such victim or witness is required to testify in
92 open court, or is unavailable as defined in s. 90.804(1), the
93 trial court may order that the testimony of the victim or
94 witness be taken outside of the courtroom and shown by means of
95 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
105 victim, the child, or the person who has an intellectual
106 disability and who will not be a witness in the case may be in
107 the room during the 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

30-00590-16

2016634__

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

121 Section 3. Subsections (1) and (3) of section 92.55,
122 Florida Statutes, are amended to read:

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

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

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

132 (b) "Sexual offense" means any offense specified in s.
133 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

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

135 (a) The age of the victim or witness ~~child~~, the nature of
136 the offense or act, the relationship of the victim or witness
137 ~~child~~ to the parties in the case or to the defendant in a
138 criminal action, the degree of emotional trauma that will result
139 to the victim or witness ~~child~~ as a consequence of the
140 defendant's presence, and any other fact that the court deems
141 relevant;

142 (b) The age of the person who has an intellectual
143 disability, the functional capacity of such person, the nature
144 of the offenses or act, the relationship of the person to the
145 parties in the case or to the defendant in a criminal action,

30-00590-16

2016634__

146 the degree of emotional trauma that will result to the person as
147 a consequence of the defendant's presence, and any other fact
148 that the court deems relevant; or

149 (c) The age of the sexual offense victim or witness when
150 the sexual offense occurred, the relationship of the sexual
151 offense victim or witness to the parties in the case or to the
152 defendant in a criminal action, the degree of emotional trauma
153 that will result to the sexual offense victim or witness as a
154 consequence of the defendant's presence, and any other fact that
155 the court deems relevant.

156 Section 4. This act shall take effect July 1, 2016.