

By Senator Baxley

12-00846B-21

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1 A bill to be entitled
2 An act relating to deposing victims of certain
3 offenses; creating s. 787.301, F.S.; prohibiting the
4 deposing of an individual who, at the time of the
5 request for the deposition, is 17 years of age or
6 younger and has been a victim of human trafficking or
7 specified sexual offenses; providing exceptions;
8 prohibiting a court from approving such depositions
9 unless it makes certain findings; requiring a court to
10 issue a protective order for the victim if the court
11 approves a deposition of the victim; providing
12 requirements for such depositions; authorizing the
13 protective order to include specified conditions;
14 providing that an individual who is 17 years of age or
15 younger and who is a victim in a prosecution of human
16 trafficking or specified sexual offenses is considered
17 a sensitive witness; providing requirements that must
18 be met before taking the deposition of a sensitive
19 witness; providing procedures if matters pertaining to
20 the deposition cannot be resolved; authorizing a
21 victim to have counsel and a victim advocate present
22 at the deposition; requiring that the victim be
23 treated as a party at hearings on motions pertaining
24 to the deposition; authorizing the victim to apply to
25 the court for a protective order; requiring that a
26 subpoena or other notice of the deposition given to
27 the victim include specified information; authorizing
28 a court to issue protective orders, which may include
29 specified conditions; authorizing the court to

12-00846B-21

20211178__

30 consider any factor it deems relevant in ruling on the
31 protective order; prohibiting certain self-represented
32 defendants from directly deposing a victim; requiring
33 the court to appoint counsel for the defendant for
34 such depositions; providing an effective date.

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36 Be It Enacted by the Legislature of the State of Florida:

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38 Section 1. Section 787.301, Florida Statutes, is created to
39 read:

40 787.301 Deposing victims of human trafficking or specified
41 sexual offenses.—

42 (1) (a) An individual who is 17 years of age or younger at
43 the time of a request for a deposition and who is a victim of
44 any of the following offenses may not be deposed, except by
45 agreement of the parties or after approval of the court pursuant
46 to paragraph (b):

47 1. Section 787.06, relating to human trafficking.

48 2. Section 794.011, relating to sexual battery.

49 3. Section 800.04, relating to lewd or lascivious offenses
50 committed upon or in the presence of persons younger than 16
51 years of age.

52 (b) A court may not approve a deposition under this
53 subsection unless the court finds that the testimony of the
54 victim is necessary to assist the trial, that the evidence
55 sought is not reasonably available by any other means, and that
56 the probative value of the testimony outweighs the potential
57 detriment to the victim of being deposed. In determining whether
58 to approve a deposition under this subsection, the court must

12-00846B-21

20211178

59 consider the availability of recorded statements of the victim
60 and the complexity of the issues involved.

61 (c) If a deposition is approved under this subsection, the
62 court must issue a protective order to protect the victim from
63 emotional harm, unnecessary annoyance, embarrassment,
64 oppression, invasion of privacy, or undue burden of expense or
65 waste of time. If a deposition is approved, the court must
66 appoint an attorney to represent the victim at the deposition.
67 The defendant may not be physically present at the deposition,
68 unless agreed to by the parties or upon entry of an order by the
69 court for good cause shown.

70 (d) The protective order may include, but need not be
71 limited to, any of the following conditions:

72 1. That the deposition be taken only on specified terms and
73 conditions, including a designation of the time, place, and
74 manner of the deposition;

75 2. That the deposition be taken only by written questions;

76 3. That the deposition specifically include, exclude, or be
77 limited to inquiry into certain matters;

78 4. That the deposition be conducted with only such persons
79 present as the court may designate; or

80 5. That after the deposition has been taken, the tape or
81 transcript be sealed until further order of the court.

82 (2) (a) An individual who is 17 years of age or younger at
83 the time of a request for a deposition and who is a victim in a
84 prosecution for any of the following offenses is considered a
85 sensitive witness:

86 1. Section 787.06, relating to human trafficking.

87 2. Section 794.011, relating to sexual battery.

12-00846B-21

20211178__

88 3. Section 800.04, relating to lewd or lascivious offenses
89 committed upon or in the presence of persons younger than 16
90 years of age.

91 (b) Before taking the deposition of a sensitive witness,
92 the party seeking to take the deposition must consult with the
93 other parties and the victim in an effort to reach an agreement
94 on the time, place, manner, and scope of the deposition. If an
95 agreement cannot be reached, the party seeking to take the
96 deposition must so advise the court and specify the matters that
97 are in dispute. The court then shall issue an order regulating
98 the taking of the deposition, including, in its discretion, a
99 requirement that the deposition be taken in the presence of a
100 judge or special master.

101 (c) A victim may have counsel present at the deposition and
102 may make legal objections to questions. The victim must be
103 treated as a party at hearings on motions pertaining to the
104 deposition. A victim may have a victim advocate present during
105 the deposition. The victim may apply to the court for a
106 protective order if he or she believes that he or she is being
107 subjected to harassment or intimidation. A subpoena issued, or
108 any other notice of the deposition given to the victim, must
109 include notice that the victim may have the assistance of
110 counsel for the deposition, may have a victim advocate present
111 for the deposition, and may seek a protective order.

112 (d)1. At the request of a party or the victim, for good
113 cause shown, the court may issue any protective order that
114 justice requires to protect a party or the victim from emotional
115 harm, unnecessary annoyance, embarrassment, oppression, invasion
116 of privacy, undue burden of expense, or waste of time. A

12-00846B-21

20211178__

117 protective order may include, but need not be limited to, any of
118 the following conditions:

119 a. That the deposition be taken only on specified terms and
120 conditions, including a designation of the time, place, and
121 manner of the deposition;

122 b. That the deposition be taken only by written questions;

123 c. That the deposition specifically include, exclude, or be
124 limited to inquiry into certain matters;

125 d. That the deposition be conducted with only such persons
126 present as the court may designate;

127 e. That after the deposition has been taken, the tape or
128 transcript be sealed until further order of the court; or

129 f. That the deposition not be taken.

130 2. In ruling on such protective order, the court may
131 consider any factor it deems relevant, including, but not
132 limited to:

133 a. The age, health, level of intellectual function, and
134 emotional condition of the victim;

135 b. Whether the victim has knowledge material to the proof
136 of or defense to any essential element of the crime;

137 c. Whether the victim has provided a full written, taped,
138 or transcribed account of his or her proposed testimony at
139 trial;

140 d. Whether the victim's testimony will relate only to a
141 peripheral issue in the case; or

142 e. Whether an informal interview or telephone conference
143 with the victim will suffice for the purposes of discovery in
144 the case.

145 (3) A self-represented defendant in a prosecution for an

12-00846B-21

20211178__

146 offense specified in subsection (1) or subsection (2) may not
147 depose the victim directly. In such a case, the court must
148 appoint counsel for the defendant for the purpose of such
149 deposition.

150 Section 2. This act shall take effect July 1, 2021.