

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

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
102 and 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
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
120 and 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
124 be limited to inquiry into certain matters;

125 d. That the deposition be conducted with only such persons

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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
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.