

By Senator Book

32-01571-21

20211328__

1 A bill to be entitled
 2 An act relating to vulnerable victims and witnesses;
 3 amending s. 92.55, F.S.; revising the standard for
 4 orders to protect certain testifying victims and
 5 witnesses; prohibiting depositions of certain victims
 6 and witnesses in certain proceedings without a showing
 7 of good cause; authorizing the court to allow such
 8 depositions under certain circumstances; revising
 9 factors to be considered by a court in a motion
 10 seeking to protect a victim or witness; revising
 11 provisions related to available relief; requiring the
 12 court to appoint a guardian ad litem or other advocate
 13 for the deponent under certain circumstances;
 14 authorizing the court to request the aid of an
 15 interpreter; requiring the court to make specific
 16 findings of fact on the record for certain orders and
 17 rulings; providing an effective date.

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

20
 21 Section 1. Section 92.55, Florida Statutes, is amended to
 22 read:

23 92.55 Judicial or other proceedings involving certain
 24 victims and witnesses ~~victim or witness under the age of 18, a~~
 25 ~~person who has an intellectual disability, or a sexual offense~~
 26 ~~victim or witness~~; special protections; use of therapy animals
 27 or facility dogs.-

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

29 (c) ~~(a)~~ "Sexual offense victim or witness" means a person

32-01571-21

20211328__

30 who was under the age of 18 when he or she was the victim of or
31 a witness to a sexual offense.

32 (a) "Facility dog" means a dog that has been trained,
33 evaluated, and certified as a facility dog pursuant to industry
34 standards and provides unobtrusive emotional support to children
35 and adults in facility settings.

36 (b) "Sexual offense" means any offense specified in s.
37 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

38 (d) "Therapy animal" means an animal that has been trained,
39 evaluated, and certified as a therapy animal pursuant to
40 industry standards by an organization that certifies animals as
41 appropriate to provide animal therapy.

42 (2) Upon motion of any party; ~~or~~ upon motion of a parent,
43 guardian, attorney, guardian ad litem, or other advocate
44 appointed by the court ~~under s. 914.17~~ for a victim or witness
45 under the age of 18, a person who has an intellectual
46 disability, or a sexual offense victim or witness; ~~or~~ or upon its
47 own motion, the court may enter any order necessary to protect
48 the person ~~victim or witness~~ in any judicial proceeding or other
49 official proceeding from moderate or severe emotional or mental
50 harm ~~due to the presence of the defendant if the victim or~~
51 ~~witness is required to testify in open court.~~ Such orders must
52 relate to the taking of testimony and include, but are not
53 limited to:

54 (a) Interviewing or the taking of depositions as part of a
55 civil or criminal proceeding.

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

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

32-01571-21

20211328__

59 including proceedings under ss. 92.53 and 92.54.

60 (3) (a) Depositions are not permitted, except upon a showing
61 of good cause, of victims or witnesses younger than the age of
62 18, persons who have intellectual disabilities, or sexual
63 offense victims in judicial proceedings or other official
64 proceedings involving any of the following:

65 1. Murder under s. 782.04.

66 2. Manslaughter under s. 782.07.

67 3. Sexual battery under s. 794.011.

68 4. Lewd or lascivious offenses under s. 800.04.

69 5. Computer pornography under s. 847.0135 or the
70 transmission of pornography by electronic device or equipment
71 under s. 847.0137.

72 6. Human trafficking under s. 787.06.

73 7. Kidnapping under s. 787.01.

74 8. False imprisonment under s. 787.02.

75 9. Aggravated cyberstalking under s. 784.048.

76 10. Child abuse or neglect of a child under s. 827.03.

77 11. Use of a child in a sexual performance under s.
78 827.071.

79 12. Any offense constituting domestic violence, as defined
80 in s. 741.28.

81 13. Abuse, abandonment, or neglect of children under
82 chapter 39 or chapter 827.

83 (b) Upon written motion and written findings that a
84 deposition is necessary to assist a trial, that the evidence
85 sought is not reasonably available by any other means, and that
86 the probative value of the testimony outweighs the potential
87 detriment to the person to be deposed, the court may authorize

32-01571-21

20211328__

88 the taking of a deposition and may order protections deemed
89 necessary, including those provided in this section.

90 (4)(3) In ruling upon a ~~the~~ motion filed under this
91 section, the court may ~~shall~~ consider:

92 (a) The age of the victim or witness. ~~child,~~

93 (b) The nature of the offense or act. ~~†~~

94 (c) The complexity of the issues involved.

95 (d) The relationship of the victim or witness ~~child~~ to the
96 parties in the case or to the defendant in a criminal action. ~~†~~

97 (e) The degree of emotional or mental harm ~~trauma~~ that will
98 result ~~to the child~~ as a consequence of the examination,
99 interview, or testimony. ~~defendant's presence, and~~

100 (f) The functional capacity of the victim or witness if he
101 or she has an intellectual disability.

102 (g) The age of the sexual offense victim or witness when
103 the sexual offense occurred.

104 (h) Any other fact that the court deems relevant. ~~†~~

105 ~~(b) The age of the person who has an intellectual~~
106 ~~disability, the functional capacity of such person, the nature~~
107 ~~of the offenses or act, the relationship of the person to the~~
108 ~~parties in the case or to the defendant in a criminal action,~~
109 ~~the degree of emotional trauma that will result to the person as~~
110 ~~a consequence of the defendant's presence, and any other fact~~
111 ~~that the court deems relevant; or~~

112 ~~(c) The age of the sexual offense victim or witness when the~~
113 ~~sexual offense occurred, the relationship of the sexual offense~~
114 ~~victim or witness to the parties in the case or to the defendant~~
115 ~~in a criminal action, the degree of emotional trauma that will~~
116 ~~result to the sexual offense victim or witness as a consequence~~

32-01571-21

20211328__

117 ~~of the defendant's presence, and any other fact that the court~~
118 ~~deems relevant.~~

119 (5)(4) In addition to such other relief provided by law,
120 the court may enter orders it deems just and appropriate for the
121 protection of limiting the number of times that a child, a
122 person who has an intellectual disability, or a sexual offense
123 victim or witness, including limiting the number of times a
124 victim or witness may be interviewed, limiting the length and
125 scope of a deposition, requiring a deposition to be taken only
126 by written questions, requiring a deposition to be in the
127 presence of a trial judge or magistrate, sealing the tape or
128 transcript of a deposition until further order of the court,
129 allowing use of a therapy animal or facility dog ~~prohibiting~~
130 ~~depositions of the victim or witness,~~ requiring the submission
131 of questions before the examination of the victim or witness,
132 setting the place and conditions for interviewing the victim or
133 witness or for conducting any other proceeding, or permitting or
134 prohibiting the attendance of any person at any proceeding. The
135 court shall enter any order necessary to protect the rights of
136 all parties, including the defendant in any criminal action.

137 (6) Section 794.022 applies to depositions taken pursuant
138 to this section. If a deposition is taken pursuant to this
139 section, the court shall appoint a guardian ad litem or other
140 advocate pursuant to s. 914.17 to represent the deponent for the
141 purposes of the deposition if the deponent does not already have
142 counsel.

143 (7) The court, on its own motion or that of any party, may
144 request the aid of an interpreter, as provided in s. 90.606, to
145 aid the parties in formulating methods of questioning the person

32-01571-21

20211328__

146 who has an intellectual disability or the sexual offense victim
147 or witness and in interpreting the answers of the person who has
148 an intellectual disability or the sexual offense victim or
149 witness during proceedings conducted under this section.

150 (8) The court shall make specific findings of fact on the
151 record as to the basis for its orders and rulings under this
152 section.

153 ~~(5) The court may set any other conditions it finds just~~
154 ~~and appropriate when taking the testimony of a victim or witness~~
155 ~~under the age of 18, a person who has an intellectual~~
156 ~~disability, or a sexual offense victim or witness, including the~~
157 ~~use of a therapy animal or facility dog, in any proceeding~~
158 ~~involving a sexual offense or child abuse, abandonment, or~~
159 ~~neglect.~~

160 ~~(a) When deciding whether to permit a victim or witness~~
161 ~~under the age of 18, a person who has an intellectual~~
162 ~~disability, or a sexual offense victim or witness to testify~~
163 ~~with the assistance of a therapy animal or facility dog, the~~
164 ~~court shall consider the age of the child victim or witness, the~~
165 ~~age of the sexual offense victim or witness at the time the~~
166 ~~sexual offense occurred, the interests of the child victim or~~
167 ~~witness or sexual offense victim or witness, the rights of the~~
168 ~~parties to the litigation, and any other relevant factor that~~
169 ~~would facilitate the testimony by the victim or witness under~~
170 ~~the age of 18, person who has an intellectual disability, or~~
171 ~~sexual offense victim or witness.~~

172 ~~(b) For purposes of this subsection the term:~~

173 ~~1. "Facility dog" means a dog that has been trained,~~
174 ~~evaluated, and certified as a facility dog pursuant to industry~~

32-01571-21

20211328__

175 ~~standards and provides unobtrusive emotional support to children~~
176 ~~and adults in facility settings.~~

177 ~~2. "Therapy animal" means an animal that has been trained,~~
178 ~~evaluated, and certified as a therapy animal pursuant to~~
179 ~~industry standards by an organization that certifies animals as~~
180 ~~appropriate to provide animal therapy.~~

181 Section 2. This act shall take effect upon becoming a law.