

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; providing requirements for obtaining
 8 such a deposition; revising factors to be considered
 9 by a court in a motion seeking to protect a victim or
 10 witness; revising provisions related to available
 11 relief; providing for appointment of a guardian ad
 12 litem or other advocate for a deponent in certain
 13 cases; authorizing the court to request the aid of an
 14 interpreter; requiring the court to make specific
 15 findings of fact on the record for orders and rulings;
 16 providing an effective date.

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

19
 20 Section 1. Section 92.55, Florida Statutes, is amended to
 21 read:

22 92.55 Judicial or other proceedings involving certain
 23 victims and witnesses ~~victim or witness under the age of 18, a~~
 24 ~~person who has an intellectual disability, or a sexual offense~~
 25 ~~victim or witness~~; special protections; use of therapy animals

26 | or facility dogs.—

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

28 | (a) "Facility dog" means a dog that has been trained,
 29 | evaluated, and certified as a facility dog pursuant to industry
 30 | standards and provides unobtrusive emotional support to children
 31 | and adults in facility settings.

32 | (b) "Sexual offense" means any offense specified in s.
 33 | 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

34 | (c) ~~(a)~~ "Sexual offense victim or witness" means a person
 35 | who was under the age of 18 when he or she was the victim of or
 36 | a witness to a sexual offense.

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

41 | (2) Upon motion of any party; or upon motion of a parent,
 42 | guardian, attorney, guardian ad litem, or other advocate
 43 | appointed by the court ~~under s. 914.17~~ for a victim or witness
 44 | under the age of 18, a person who has an intellectual
 45 | disability, or a sexual offense victim or witness; or upon its
 46 | own motion, the court may enter any order necessary to protect
 47 | the person ~~victim or witness~~ in any judicial proceeding or other
 48 | official proceeding from moderate or severe emotional or mental
 49 | harm ~~due to the presence of the defendant if the victim or~~
 50 | ~~witness is required to testify in open court.~~ Such orders must

51 relate to the taking of testimony and include, but are not
52 limited to:

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

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

57 (c) The use of testimony taken outside of the courtroom,
58 including proceedings under ss. 92.53 and 92.54.

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

64 1. Murder under s. 782.04.

65 2. Manslaughter under s. 782.07.

66 3. Sexual battery under s. 794.011.

67 4. Lewd or lascivious offenses under s. 825.1025.

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

71 6. Human trafficking under s. 787.06.

72 7. Kidnapping under s. 787.01.

73 8. False imprisonment under s. 787.02.

74 9. Aggravated cyberstalking under s. 784.048.

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

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

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

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

82 (b) Upon written motion and findings that a deposition is
 83 necessary to assist a trial, that the evidence sought is not
 84 reasonably available by any other means, and that the probative
 85 value of the testimony outweighs the potential detriment to the
 86 person to be deposed, the court may authorize the taking of a
 87 deposition and may order protections deemed necessary, including
 88 those provided in this section.

89 (4)~~(3)~~ In ruling upon a ~~the~~ motion filed under this
 90 section, the court may ~~shall~~ consider:

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

92 (b) The nature of the offense or act.7

93 (c) The complexity of the issues involved.

94 (d) The relationship of the victim or witness ~~child~~ to the
 95 parties in the case or to the defendant in a criminal action.7

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

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

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

103 (h) Any other fact that the court deems relevant.

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

111 ~~(c) The age of the sexual offense victim or witness when~~
112 ~~the sexual offense occurred, the relationship of the sexual~~
113 ~~offense victim or witness to the parties in the case or to the~~
114 ~~defendant in a criminal action, the degree of emotional trauma~~
115 ~~that will result to the sexual offense victim or witness as a~~
116 ~~consequence of the defendant's presence, and any other fact that~~
117 ~~the court deems relevant.~~

118 (5)(4) In addition to such other relief provided by law,
119 the court may enter orders it deems just and appropriate for the
120 protection of limiting the number of times that a child, a
121 person who has an intellectual disability, or a sexual offense
122 victim or witness including limiting the number of times a
123 victim or witness may be interviewed, limiting the length and
124 scope of a deposition, requiring a deposition to be taken only
125 by written questions, requiring a deposition to be in the

126 presence of a trial judge or magistrate, sealing the tape or
127 transcript of a deposition until further order of the court,
128 allowing use of a therapy animal or facility dog ~~prohibiting~~
129 ~~depositions of the victim or witness,~~ requiring the submission
130 of questions before the examination of the victim or witness,
131 setting the place and conditions for interviewing the victim or
132 witness or for conducting any other proceeding, or permitting or
133 prohibiting the attendance of any person at any proceeding. The
134 court shall enter any order necessary to protect the rights of
135 all parties, including the defendant in any criminal action.

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

142 (7) The court, on its own motion or that of any party, may
143 request the aid of an interpreter, as provided in s. 90.606, to
144 aid the parties in formulating methods of questioning the person
145 who has an intellectual disability or the sexual offense victim
146 or witness and in interpreting the answers of the person who has
147 an intellectual disability or the sexual offense victim or
148 witness during proceedings conducted under this section.

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

151 section.

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

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

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

172 ~~1. "Facility dog" means a dog that has been trained,~~
173 ~~evaluated, and certified as a facility dog pursuant to industry~~
174 ~~standards and provides unobtrusive emotional support to children~~
175 ~~and adults in facility settings.~~

HB 465

2021

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

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