

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 772

INTRODUCER: Children, Families, and Elder Affairs Committee; and Senators Diaz and Perry

SUBJECT: Protection of Victims and Witnesses

DATE: January 31, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 772 revises a statute governing the authority of a court to protect a child, a person having an intellectual disability, or a sexual offense victim or witness from harm or abuse that may result from giving testimony in a court proceeding or at a deposition. Under existing law and court rules, courts have broad authority to fashion and order protections for victims and witnesses in these circumstances. But existing law identifies only a handful of examples of the kinds of protections that courts may require.

The bill preserves, and perhaps slightly expands, the broad authority of a court to protect those who give testimony. However, the bill expressly requires the court to consider whether or how that authority should be exercised in a proceeding involving a violent or sexual offense when a party seeks to depose a child, a person having an intellectual disability, or a sexual offense victim or witness. The new methods listed in the bill that a court may use to protect a vulnerable victim or witness include limiting the length and scope of a deposition, requiring a deposition to be taken by written questions, requiring a deposition to be taken in the presence of a judge or magistrate, and sealing the deposition records.

Additionally, the bill requires, for University of South Florida, in consultation with the Florida Alliance to End Human Trafficking, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data. This proposal must be submitted by October 1, 2022.

This bill does not appear to have a fiscal impact on state, county, or municipal governments. See V. Fiscal Impact Statement.

The bill is effective upon becoming law.

II. Present Situation:

Vulnerable Victims and Witnesses

Florida currently provides several protections relating to the protection of vulnerable victims and witnesses who are either underage or intellectually disabled, but does not specifically provide similar protections for other vulnerable victims or witnesses.

Section 92.55(2), F.S., authorizes the court, or any party, parent, guardian, attorney, guardian ad litem,¹ or other appointed advocate, to motion for any order to protect the following persons from severe emotional or mental harm due to the presence of the defendant, if the victim or witness (“vulnerable victim or witness”) is required to testify in open court:

- A victim or witness under the age of 18;
- A person with an intellectual disability;² or
- A victim or witness who was under the age of 18 at the time he or she was a victim of or witness to a sexual offense.^{3, 4}

¹ Section 39.820(1), F.S., states “guardian ad litem,” as referred to in any civil or criminal proceeding, includes the following: the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs; a duly certified volunteer, a staff member, a staff attorney, a contract attorney, or a pro bono attorney working on behalf of a guardian ad litem; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interest of a child in a proceeding as provided for by law, including, but not limited to ch. 39, F.S., who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

² Section 393.063, F.S., defines “intellectual disability” as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purpose of this definition, the term: (a) “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, or community; (b) “Significantly subaverage general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intellectual test specified in the rules of the agency.

³ Section 92.55(2), F.S.

⁴ Section 92.55(1)(b), F.S., defines “sexual offense” as any offense which qualifies a person as a sexual predator under s. 775.21(4)(a)1., F.S., or a sexual offender under s. 943.0435(1)(h)1., F.S. Both the sexual predator and sexual offender provisions include s. 787.06(3)(b),(d),(f), or (g), F.S., as an enumerated offense that qualifies a person to such registration requirements. The specific provisions included relate to subjecting a person to specified types of human trafficking, including: using coercion for commercial sexual activity of an adult; using coercion for commercial sexual activity of an adult who is an unauthorized alien; for commercial sexual activity by the transferring or transporting a minor from outside this state to within the state; or for commercial sexual activity in which any minor or any person who is mentally defective or mentally incapacitated is involved. Section 787.06(2)(a), F.S. defines “coercion” as 1. Using or threatening to use force against a person; 2. Restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so; 3. Using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward the liquidation of the debt; 4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or government identification document; 5. Causing or threatening to cause financial harm; 6. Enticing or luring a person by fraud or deceit; or 7. Providing a Schedule I or II controlled substance to a person for the purpose of exploiting that person. See s. 893.03, F.S. for standards and schedules of control substances. Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit such an offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S.,

Such orders must relate to the taking of testimony and include, but are not limited to:

- Interviewing or the taking of depositions as part of a civil or criminal proceeding;
- Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding;
- The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53⁵ and 92.54, F.S.⁶

Depositions

Criminal

In felony⁷ criminal proceedings, after the filing of a charging document, the defendant may elect to participate in the discovery process, including the taking of depositions, by filing with the court and the prosecuting attorney a “Notice of Discovery.”⁸ A party must give reasonable notice in writing to the each other party and make a good faith effort to coordinate a date, time, and location of the deposition with the other parties and witness to be deposed.⁹ Except as provided in the Florida Rules of Criminal Procedure, the procedure for taking a deposition in a criminal proceeding is the same as that provided in the Florida Rules of Civil Procedure and s. 48.031, F.S.^{10, 11}

The parties in criminal proceedings are allowed to take the deposition of any witness listed by the prosecutor as a Category A witness or listed by a co-defendant, but must show good cause for Category B witnesses or to take depositions in a misdemeanor or criminal traffic offense case.¹² The Florida Rules of Criminal Procedure set out a list of factors that the court should consider

defines “sexually explicit performances” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

⁵ Section 92.53, F.S., relates to videotaping the testimony of a victim or witness under age 18 or who has an intellectual disability.

⁶ Section 92.54, F.S., relates to the use of closed-circuit television in proceedings involving a victim or witness under the age of 18 or who has an intellectual disability.

⁷ While a defendant charged with a misdemeanor or criminal traffic offense may request for a deposition to be taken, the Florida Rules of Criminal Procedure only allow for a deposition to take place upon a showing of good cause. Fla. R.

Crim.(h)(1)(D) P. 3.220(a)

⁸ Fla. R. Crim. P. 3.220(a).

⁹ Fla. R. Crim. P. 3.220(h)(1).

¹⁰ Section 48.031, F.S., provides that a criminal witness subpoena commanding the witness to appear for a deposition may be posted by a person authorized to serve process at the witness’s residence if one attempt to serve the subpoena has failed.

¹¹ Fla. R. Crim. P. 3.220(h)(1).

¹² Fla. R. Crim. P. 3.220(h)(1)(A), (B), and (D). Category C witnesses may not be deposed unless the court determines that the witness should be listed in another category. Category A witnesses include eye witnesses, alibi witnesses and rebuttal to alibi witnesses, witnesses who were present when a recorded or unrecorded statement was taken from or made by a defendant or codefendant, investigating officers, witnesses known by the prosecutor to have any material information that tends to negate the guilt of the defendant as to any offense charged, child hearsay witnesses, expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify, and informant witnesses, whether in custody, who offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried. Category C is all witnesses who performed only ministerial functions or whom the prosecutor does not intend to call at trial and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense. Category B witnesses include any witnesses not listed in either Category A or Category C.

when deciding whether good cause has been shown, such as the consequences to the defendant, the complexity of the issues involved, and complexity of the testimony of the witness.¹³ Depositions of children who are under 18 years of age must be videotaped unless otherwise ordered by the court, and the court has the discretion to order videotaping of a deposition or the taking of a deposition of a witness with a fragile emotional strength, or an intellectual disability to be in the presence of a trial judge or a special magistrate. Upon a showing of good cause, the court may also issue protective orders, for instance, limiting the scope of a deposition or sealing a deposition.¹⁴

Civil

In civil proceedings, after the commencement of an action, any party may take a deposition of any person, including a party, upon oral examination¹⁵ or upon written questions.¹⁶ A party who wishes to take a deposition of a person upon oral examination must give reasonable notice in writing to every party.¹⁷ Leave of court is required in limited circumstances, such as certain instances when a plaintiff seeks to take a deposition within 30 days after service of process or initial pleading upon the defendant.¹⁸ Any deposition may be recorded by videotape without leave of court or stipulation by the parties as long as the taking of the deposition complies with certain Rules, such as the party must include the intent to videotape the deposition and other related details in the notice of taking the deposition.¹⁹

For good cause shown, the court may enlarge or shorten the time for the taking of deposition.²⁰ On motion of a party or the deponent and a showing that the examination is being conducted in bad faith or other specified circumstances, the court in which the action is pending or the circuit court where the deposition is being taken may terminate or limit the scope of the deposition.²¹

Examination and Cross-Examination for Qualifying a Witness or Testifying

Every person is competent to be a witness except as otherwise provided by statute.²² A person is disqualified from testifying as a witness if the court finds that the person is:

- Incapable of expressing himself or herself concerning the matter in such a manner as to be understood; or
- Incapable of understanding the duty of a witness to tell the truth.²³

Further, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion if certain criteria is met.²⁴ Prior to an expert witness

¹³ See Fla. R. Crim. P. 3.200(h)(1)(B) and (D)

¹⁴ Fla. R. Crim. P. 3.220(1)(1)

¹⁵ Fla. R. Civ. P. 1.310(a)

¹⁶ Fla. R. Civ. P. 1.320(a)

¹⁷ Fla. R. Civ. P. 1.310(b)

¹⁸ Fla. R. Civ. P. 1.310(a)

¹⁹ Fla. R. Civ. P. 1.310(b)(4)

²⁰ Fla. R. Civ. P. 1.310(b)(3)

²¹ Fla. R. Civ. P. 1.310(d)

²² Section 90.601, F.S.

²³ Section 90.603, F.S.

²⁴ Section 90.702, F.S.

giving an opinion, the party against whom the opinion is offered may conduct a voir dire examination of the witness directed at the underlying facts or data for the witness's opinion.²⁵

Video Testimony

Sections 92.53 and 92.54, F.S., authorize a court to enter a protective order after a motion and hearing in camera if the court finds that a victim or witness under 18 years of age or who has an intellectual disability is substantially likely to suffer at least moderate emotional or mental harm due to the presence of the defendant if required to testify in open court.

The court may order the testimony of such a victim or witness be videotaped and used in lieu of testimony in open court. However, the defendant and his or her counsel must be allowed to be present at any videotaping, but the court may order the defendant to view the testimony from outside the presence of the protected individual.²⁶ Alternatively, the court may require that the protected individual's testimony be taken outside the courtroom and shown in the courtroom by means of closed circuit television.²⁷ Only specified parties are allowed in the room where the testimony is recorded. A court may require a defendant to view the testimony from the courtroom, but must permit the defendant to observe and hear the person's testimony.²⁸

Special Protections of Vulnerable Victims and Witnesses

The court must consider several factors when ruling upon a motion to protect a vulnerable victim or witness, including, but not limited to: the age of the vulnerable victim or witness, the nature of the offense or act, the relationship of the vulnerable victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the vulnerable victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.²⁹

When a victim or witness meets specified criteria, the court may enter an order:

- Limiting the number of times protected individuals may be interviewed;
- Prohibiting depositions of a victim or witness;
- Requiring the submission of questions before examination of a victim or witness;
- Setting the place and conditions for interviewing a victim or witness or for conducting any other proceeding; or
- Allowing or prohibiting any person's attendance at any proceeding.³⁰

The court may also order any other conditions it finds just and appropriate including the use of a therapy animal or facility dog, in any proceeding involving a sexual offense or child abuse, abandonment, or neglect.³¹ The court must consider certain factors when deciding whether to permit a vulnerable victim or witness to testify with the assistance of a therapy animal or facility dog, including, but not limited to, the age and interests of the vulnerable victim or witness, the

²⁵ Section 90.705(2), F.S.

²⁶ Section 92.53(4), F.S.

²⁷ Section 92.54, F.S.

²⁸ Section 92.53(4), F.S.

²⁹ Section 92.55(3), F.S.

³⁰ Section 92.55(4), F.S.

³¹ Section 92.55(5), F.S.

rights of the parties to the litigation, and any other relevant factors that would facilitate the testimony of the vulnerable victim.³²

Section 92.55(5)(b), F.S., defines the following terms:

- “Facility dog” as a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings.
- “Therapy animal” as an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

Human Trafficking

Human trafficking is a form of modern-day slavery.³³ Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.³⁴ Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.³⁵ Any minor who is younger than 18 years of age, and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.³⁶ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.³⁷

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,³⁸ purchasing, patronizing, procuring, or obtaining³⁹ another person for the purpose of exploitation of that person.⁴⁰ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.⁴¹

³² Section 92.55(5)(a), F.S.

³³ Section 787.06(1)(a), F.S.

³⁴ *Id.*

³⁵ The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 12, 2022).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service.

Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

³⁹ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

⁴⁰ Section 787.06(2)(d), F.S.

⁴¹ Section 787.06(3), F.S.

Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor or services of any child under the age of 18 commits a first degree felony;⁴²
- Labor or services of any child under the age of 18 who is an unauthorized alien⁴³ commits a first degree felony;⁴⁴
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;⁴⁵
- Commercial sexual activity⁴⁶ who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;⁴⁷ or
- Commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective⁴⁸ or mentally incapacitated⁴⁹ is involved commits a life felony.⁵⁰

The above-mentioned first degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.⁵¹ Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.⁵²

Florida is ranked the third highest state of reported human trafficking cases in the United States.⁵³ In 2020, the Florida Abuse Hotline received an increase in reports of commercially exploited children from 3,088 reports in 2019 to 3,181 reports in 2020.⁵⁴

⁴² Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁴³ Section 787.06(2)(j), F.S., defines "unauthorized alien" as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

⁴⁴ Section 787.06(3)(c)1., F.S.

⁴⁵ Section 787.06(3)(e)1., F.S.

⁴⁶ Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

⁴⁷ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁴⁸ Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

⁴⁹ Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

⁵⁰ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

⁵¹ Section 787.06(8)(b), F.S.

⁵² Section 787.06(9), F.S.

⁵³ Florida Alliance to End Human Trafficking, *We need to End Human Trafficking in the State of Florida*, <https://floridaallianceendht.com/> (last visited January 12, 2022).

⁵⁴ Office of Program Policy Analysis and Gov't Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, Report No. 2106, p. 2, (July 2021), <https://oppaga.fl.gov/Documents/Reports/21-06.pdf> (last visited Jan. 12, 2022).

Human Trafficking Data Collection

Human trafficking data is primarily based on information provided by identified victims.⁵⁵ Data is typically collected by a range of different individuals, including law enforcement, courts, and non-governmental organizations offering protection and assistance to victims.⁵⁶ Federal law requires the FBI to collect human-trafficking data.⁵⁷ State programs and local law enforcement agencies that participate in federal data collection efforts provide counts of offenses, case clearances, and arrests for human trafficking for the purpose of commercial sex acts or involuntary servitude.⁵⁸

The University of South Florida (USF) recently developed a statewide central database to allow for tracking incidents of human trafficking down to specific neighborhoods and zip codes.⁵⁹ The lab is currently working with Hillsborough, Pinellas, and Pasco counties on sharing data collected from numerous entities, including law enforcement, courts, the DCF, and the Department of Health.⁶⁰ The lab also plans to provide real-time data on available vacancies within human trafficking shelters throughout the state.⁶¹

III. Effect of Proposed Changes:

Vulnerable Victims and Witnesses

The bill amends various provisions in s. 92.55, F.S., relating to judicial or other proceedings involving victims and witnesses younger than the age of 18, persons who have intellectual disabilities, or sexual offense victims or witnesses.

Upon a motion of any party, specified persons appointed to represent a vulnerable victim or witness, or on the court's own motion, the court may enter an order necessary to protect the person in any judicial or other proceeding from moderate emotional or mental harm, as opposed to severe as required under current law. The requirement under current law that the harm be "due to the presence of the defendant if the victim or witness is required to testify in open court" has been deleted.

⁵⁵ The UN Global Migration Data Analysis Centre, *Migration Data Portal: Human Trafficking*, (last updated May 6, 2021) available at <https://www.migrationdataportal.org/themes/human-trafficking#data-sources> (last visited Jan. 12, 2022).

⁵⁶ *Id.*

⁵⁷ The U.S. Department of Justice, *Human Trafficking Data Collection Activities, 2021*, p. 2 (October 2021), available at <https://bjs.ojp.gov/content/pub/pdf/htdca21.pdf> (last visited Jan. 12, 2022).

⁵⁸ *Id.*

⁵⁹ Briona Arradondo, *USF Creates First Centralized Human Trafficking Incident Database*, FOX 13, October 15, 2021, available at <https://www.fox13news.com/news/usf-creates-first-centralized-human-trafficking-incident-database> (last visited Jan. 12, 2022).

⁶⁰ *Id.*

⁶¹ *Id.*

The bill provides that depositions are prohibited, except upon a showing of good cause, of vulnerable victims or witnesses involving any of the following:

- Abuse,⁶² abandonment,⁶³ or neglect⁶⁴ of children under ch. 39, F.S.,⁶⁵
- Any offense constituting domestic violence,⁶⁶
- Murder;
- Manslaughter;
- Aggravated cyberstalking;⁶⁷
- Kidnapping;
- False imprisonment;⁶⁸
- Human trafficking;⁶⁹
- Sexual battery;
- Lewd or lascivious offenses;⁷⁰

⁶² Section 39.01(2), F.S., defines “abuse” as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.

⁶³ Section 39.01(1), F.S., defines “abandoned” or “abandonment” as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. “Establish or maintain a substantial and positive relationship” means, in part, frequent and regular contact with the child, and the exercise of parental rights and responsibilities.

⁶⁴ Section 39.01(50), F.S., states “neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

⁶⁵ Chapter 39, F.S., relates to dependency proceedings.

⁶⁶ Section 741.28(2), F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

⁶⁷ Section 784.048(1)(d), F.S., states “cyberstalk” means: 1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or 2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission, causing substantial emotional distress to that person and serving no legitimate purpose.

⁶⁸ Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

⁶⁹ Section 787.06(2)(d), F.S., defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.

⁷⁰ Section 825.1025(2)(a), F.S., states that “lewd or lascivious battery upon an elderly person or disabled person” occurs when a person encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent. Section 825.1025(3)(a), F.S., states that “lewd or lascivious molestation of an elderly person or disabled person” occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent. Section 825.1025(4)(a), F.S., states that “lewd or lascivious exhibition in the presence of an elderly person or disabled person” occurs when a person, in the presence of an elderly person or disabled person: 1. Intentionally masturbates; 2. Intentionally exposes his or her genitals in a lewd or lascivious manner; or 3. Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or

- Child abuse or neglect;^{71, 72}
- Use of a child in a sexual performance;⁷³ or
- Computer pornography⁷⁴, or the transmission of pornography by electronic device or equipment.

The court may authorize the taking of a deposition and may order protections deemed necessary upon written motion and written findings that:

- A deposition is necessary to assist a trial;
- The evidence sought is not reasonably available by any other means; and
- The probative value of the testimony outweighs the potential detriment to the person to be deposed.

The bill also modifies current law to give the court discretion, rather than require, the court to consider certain factors when ruling on a motion to take a deposition under s. 92.55(4), F.S. Such factors are also amended, the last two points below of which have been relocated from s. 92.55(3)(b) and (c), F.S., to include:

- The complexity of the issues involved;
- The degree of emotional or mental harm, as opposed to trauma, that will result as a consequence of the examination;
- The functional capacity of the victim or witness if he or she has an intellectual disability; and
- The age of the sexual offense victim or witness when the sexual offense occurred.

The other factors listed under s. 92.55(3)(b) and (c), F.S., are removed under the bill.

Provisions related to determining when to permit the use of a facility dog or therapy animal found in s. 92.55(5)(a), F.S., are included, in part, under the renumbered s. 92.55(4), F.S., and that subsection is otherwise removed from the section. The factors that are removed include:

- The interests of the child victim or witness or sexual offense victim or witness; and

the simulation of any act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent to having such act committed in his or her presence.

⁷¹ Section 827.03(1)(b), F.S., defines “child abuse” as: 1. Intentional infliction of physical or mental injury upon a child; 2. An intentional act that could reasonably be expected to result in physical or mental injury to a child; or 3. Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

⁷² Section 827.03(1)(e), F.S., defines “neglect” as: 1. A caregiver’s failure or omission to provide a child with the care, supervision and services necessary to maintain the child’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or 2. A caregiver’s failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

⁷³ Section 827.071(1)(i), F.S., defines “sexual performance” as any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

⁷⁴ Section 847.0135(2), F.S., defines “computer pornography” as a person who: (a) knowingly compiles, enters into, or transmits by use of computer; (b) makes, prints, publishes, or reproduces by other computerized means; (c) knowingly causes or allows to be entered into or transmitted by use of computer; or (d) buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct.

- The rights of the parties to the litigation.

The bill requires any orders the court makes to protect vulnerable victims or witnesses to be deemed just and appropriate. The bill also adds protections that the court may order, including:

- Limiting the length and scope of a deposition;
- Requiring a deposition to be taken only by written questions;
- Requiring a deposition to be in the presence of a trial judge or magistrate;
- Sealing the tape or transcript of a deposition until further order of the court; or
- Allowing the use of a therapy animal or facility dog.

The bill provides that s. 794.022, F.S., related to the rules of evidence in prosecutions, applies to depositions taken pursuant to s. 92.55, F.S. If a deposition is taken pursuant to s. 92.55, F.S., the court must appoint a guardian ad litem or other advocate pursuant to s. 914.17, F.S., to represent the deponent for purposes of the deposition if the deponent does not already have counsel. On its own motion or that of any party, the court may request the aid of an interpreter to aid in formulating methods of questioning and in interpreting his or her answers during proceedings conducted under s. 92.55, F.S. The bill requires the court to make specific findings of fact on the record as to the basis for its orders and rulings under s. 92.55, F.S.

The bill relocates the definitions of “facility dog” and “therapy animal” from s. 92.55(5)(b), F.S., to s. 92.55(1), F.S., and makes technical amendments to the section.

Human Trafficking Victim Data Collection

The bill requires, by October 1, 2022, the University of South Florida, in consultation with the Florida Alliance to End Human Trafficking, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data. The proposal:

- Must provide that the data repository will be housed within the University of South Florida’s Trafficking in Persons-Risk to Resilience Research Lab;
- Must outline the need for a unified data repository to serve as a portal to collect and analyze anonymous statewide human trafficking data, to inform statewide efforts to combat human trafficking, and to better serve victims of human trafficking; and
- Should consider and recommend various funding mechanisms to establish and operate the data repository, including the potential for use of institutional and privately-donated funds.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article III, section 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith.” When courts must assess whether a bill complies with this single-subject requirement, the “standard of review is highly deferential.”⁷⁵

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 772 requires the court to apply amended standards for when and what kind of protections to grant to vulnerable victims and witnesses. To the extent that the bill results in additional court hearings to determine good cause and appropriate protections for vulnerable victims and witnesses, the bill will result in an indeterminate negative impact on the courts, state attorneys, defense counsel, and civil litigators.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷⁵ *Franklin v. State*, 887 So. 2d 1069, 1073 (Fla. 2004). However, the “accomplishment of several ‘purposes’ may be logically embraced in one ‘subject’ so long as all such purposes are germane to . . . the expressed general subject.” *Id.* at 1078 (citing *State ex rel. Crump v. Sullivan*, 128 So. 478, 480 (1930)).

VIII. Statutes Affected:

This bill substantially amends sections 92.55 and 943.0583 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families, and Elder Affairs on January 11, 2022:**

The committee substitute:

- Removes the amendment that expands the authorization of human trafficking victims to expunge a criminal history record;
- Requires, by October 1, 2022, the University of South Florida, in consultation with The Florida Alliance to End Human Trafficking to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data; and
- Specifies certain content that must be included in the proposal.

B. Amendments:

None.