

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 Children, Families, and Elder Affairs

BILL: SB 772

INTRODUCER: Senator Diaz

SUBJECT: Vulnerable Victims and Witnesses

DATE: January 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 772 amends s. 92.55, F.S., revising the judicial or other proceedings involving certain victims and witnesses. The bill modifies current law to allow courts to enter an order that is necessary to protect a specified victim or witness in any judicial proceeding or other official proceeding from moderate emotional or mental harm, instead of severe harm as is required for the court to currently enter such an order. The bill also removes the requirement that the harm be “due to the presence of the defendant if the victim or witness is required to testify in open court.”

The bill prohibits depositions, except upon a showing of good cause, of certain victims and witnesses in proceedings involving specified offenses. Upon a written motion and certain written findings, the court may authorize the taking of a deposition and order certain protections that are deemed necessary. The bill modifies the list of factors that the court must consider when ruling upon such a motion.

The bill amends the provision which allows the court to enter orders for additional relief to protect certain victims and witnesses. The amendment requires the court to deem such relief just and appropriate for the protection of the specified victims and witnesses, and modifies the type of other relief which the court may grant. It also relocates, in part, and modifies, in part, the provisions relating to the court setting other conditions it finds just and appropriate when taking testimony of certain victims and witnesses in any proceeding involving a sexual offense or child abuse, abandonment, or neglect, and removes the list of factors the court must consider when deciding whether to permit such victims or witnesses to testify with the assistance of a therapy animal or facility dog.

The bill expands the application of s. 794.022, F.S., related to the rules of evidence in prosecutions of human trafficking, sexual battery, and certain lewd and lascivious offenses, 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, as provided in s. 90.606, F.S., 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” within s. 92.55, F.S., and makes technical amendments to the section.

The bill expands the application of s. 943.0583, F.S., authorizing a human trafficking victim to expunge a criminal history record related to any offense listed in s. 775.084(1)(b)1., related to a habitual violent felony offender designation, provided the victim of human trafficking was not found guilty of, or pled guilty or nolo contendere to, such an offense.

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 fair treatment of vulnerable victims and witnesses who are either underage or intellectually disabled, but does not currently 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

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.

- 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}

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 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”.⁷ 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.⁸ 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.^{9, 10}

³ 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., 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.

⁴ Section 92.55(2), F.S.

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 Rule 3.220(a), Fla.R.Crim.P.

⁸ Rule 3.220(h)(1), Fla.R.Crim.P.

⁹ 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.

¹⁰ Rule 3.220(h)(1), Fla.R.Crim.P.

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.¹¹ The Florida Rules of Criminal Procedure set out a list of factors that the court should consider 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.¹² 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.¹³

Civil

In civil proceedings, after the commencement of an action, any party may take a deposition of any person, including a party, upon oral examination¹⁴ or upon written questions.¹⁵ A party who wishes to take a deposition of a person upon oral examination must give reasonable notice in writing to every party.¹⁶ 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.¹⁷ 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.¹⁸

For good cause shown, the court may enlarge or shorten the time for the taking of deposition.¹⁹ 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.²⁰

¹¹ Rule 3.220(h)(1)(A), (B), and (D), Fla.R.Crim.P. 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.

¹² See Rule 3.200(h)(1)(B) and (D), Fla.R.Crim.P.

¹³ Rule 3.220(1)(1), Fla.R.Crim.P.

¹⁴ Rule 1.310(a), Fla.R.Civ.P.

¹⁵ Rule 1.320(a), Fla.R.Civ.P.

¹⁶ Rule 1.310(b), Fla.R.Civ.P.

¹⁷ Rule 1.310(a), Fla.R.Civ.P.

¹⁸ Rule 1.310(b)(4), Fla.R.Civ.P.

¹⁹ Rule 1.310(b)(3), Fla.R.Civ.P.

²⁰ Rule 1.310(d), Fla.R.Civ.P.

Examination and Cross-Examination for Qualifying a Witness or Testifying

Every person is competent to be a witness except as otherwise provided by statute.²¹ 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.²²

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.²³ Prior to an expert witness 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.²⁴

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.²⁵ 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.²⁶ 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.²⁷

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.²⁸

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;

²¹ Section 90.601, F.S.

²² Section 90.603, F.S.

²³ Section 90.702, F.S.

²⁴ Section 90.705(2), F.S.

²⁵ Section 92.53(4), F.S.

²⁶ Section 92.54, F.S.

²⁷ Section 92.53(4), F.S.

²⁸ Section 92.55(3), F.S.

- 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.²⁹

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.³⁰ 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 rights of the parties to the litigation, and any other relevant factors that would facilitate the testimony of the vulnerable victim.³¹

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 Victim Expunction

In 2013, the Legislature created a process authorizing a victim of human trafficking³² to petition a court for the expunction of a criminal history record resulting from his or her arrest or filing of charges, regardless of the disposition of the arrest or charges, for an offense committed or reported to have been committed while he or she was a victim of human trafficking.³³ For purposes of human trafficking victim expunction, “victim of human trafficking” means a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

To be eligible for expunction, the criminal offense must be related to a human trafficking scheme of which the person was a victim or the offense must have been committed at the direction of an operator of the scheme,³⁴ and must not be one of the enumerated offenses under s. 775.084(1)(b)1., related to the designation as a “habitual violent felony offender”, including:

²⁹ Section 92.55(4), F.S.

³⁰ Section 92.55(5), F.S.

³¹ Section 92.55(5)(a), F.S.

³² 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. Section 787.06(2)(f), F.S., states “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 services. Section 787.06(2)(g), F.S., states that “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.

³³ Chapter 2013-98, L.O.F.

³⁴ Section 943.0583, F.S.

- Arson;³⁵
- Sexual battery;³⁶
- Robbery;³⁷
- Kidnapping;³⁸
- Aggravated child abuse;³⁹
- Aggravated abuse of an elderly person or disabled adult;⁴⁰
- Aggravated assault with a deadly weapon;⁴¹
- Murder;⁴²
- Manslaughter;⁴³
- Aggravated manslaughter of an elderly person or disabled adult;⁴⁴

³⁵ Section 806.01(1), F.S., states that any person who willfully and unlawfully, or while in the commission of any felony, by fire or explosion, damages or causes to be damaged: (a) Any dwelling, whether occupied or not, or its contents; (b) Any structure, or contents thereof, where persons are normally present, such as: jails, prisons, or detention centers; hospitals, nursing homes, or other health care facilities; department stores, office buildings, business establishments, churches, or educational institutions during normal hour of occupancy; or other similar structures; or (c) Any other structure that he or she knew or had reasonable grounds to believe was occupied by a human being, is guilty of arson in the first degree.

³⁶ Section 794.011(1)(h), F.S., defines “sexual battery” as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

³⁷ Section 812.13(1), F.S., defines “robbery” as the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

³⁸ Section 787.01(1)(a), F.S., defines “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to: 1. Hold for ransom or reward or as a shield or hostage; 2. Commit or facilitate commission of any felony; 3. Inflict bodily harm upon or to terrorize the victim or another person; or 4. Interfere with the performance of any governmental or political function.

³⁹ Section 827.03(1)(a), F.S., states “aggravated child abuse” occurs when a person: 1. Commits aggravated battery on a child; 2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or 3. Knowingly or willfully abuses a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to the child.

⁴⁰ Section 825.102(2), F.S., states “aggravated abuse of an elderly person or disabled adult” occurs when a person: (a) Commits aggravated battery on an elderly person or disabled adult; (b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages an elderly person or disabled adult; or 3. Knowingly or willfully abuses an elderly person or disabled adult and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.

⁴¹ Section 784.021(1), F.S., defines “aggravated assault” as an assault: (a) with a deadly weapon without the intent to kill; or (b) with an intent to commit a felony.

⁴² Section 782.04(1)(a), F.S., states that the unlawful killing of a human being: 1. When perpetrated from a premeditated design to effect the death of the person killed or any human being; 2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any specified offense under s. 782.04(2), F.S., is murder in the first degree. The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is murder in the second degree. When a human being is killed during the perpetration of, or during the attempt to perpetrate, any specified offense under s. 782.04(3), F.S., by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits murder in the second degree. The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in an attempt to perpetrate, any felony other than specified offenses under s. 782.04(4), F.S., is murder in the third degree.

⁴³ Section 787.07(1), F.S., states that the killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of ch. 776, F.S., and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of ch. 782, F.S., is manslaughter.

⁴⁴ Section 782.07(2), F.S., states that a person who causes the death of any elderly person or disabled adult by culpable negligence under s. 825.102(3) commits aggravated manslaughter of an elderly person or disabled adult.

- Aggravated manslaughter of a child;⁴⁵
- Unlawful throwing, placing, or discharging of a destructive device or bomb;⁴⁶
- Armed burglary;⁴⁷
- Aggravated battery;⁴⁸ or
- Aggravated stalking.⁴⁹

Any court in the circuit that has jurisdiction over the class of the crime the human trafficking victim seeks to expunge is the court designated to hear the victim's petition.⁵⁰ A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking services.⁵¹ The petition must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.⁵²

In contrast to other expunctions made under s. 943.0585, F.S., a court is required to treat a petition seeking to expunge more than one eligible case as a single petition.⁵³ Florida's clerks of

⁴⁵ Section 782.07(3), F.S., states that a person who causes the death of any person under the age of 18 by culpable negligence under s. 827.03(2)(b), F.S., commits aggravated manslaughter of a child.

⁴⁶ Section 790.161(1), F.S., states that a person who willfully and unlawfully makes, possesses, throws, projects, places, discharges, or attempts to make, possess, throw, project, place, or discharge any destructive device commits a felony of the third degree.

⁴⁷ Section 810.02(1)(b), F.S., defines "burglary" as 1. Entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter; or 2. Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance: a. Surreptitiously, with the intent to commit an offense therein; b. After permission to remain therein has been withdrawn, with the intent to commit an offense therein; or c. To commit or attempt to commit a forcible felony. A burglary is a felony of the first degree if, amongst other things, the offender is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon. Section 810.02(2)(b), F.S. Section 776.08, F.S., defines "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁴⁸ Section 784.045(1)(a), F.S., states a person commits aggravated battery who, in committing battery: 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or 2. Uses a deadly weapon.

⁴⁹ Section 784.048(3), F.S., states that a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking. Section 784.048(1)(a), F.S., states that "harass" means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. Section 784.048(1)(c), F.S., defines "credible threat" as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. 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. Section 784.048(1)(b), F.S., defines "course of conduct" as a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

⁵⁰ Section 943.0583(2), F.S.

⁵¹ Section 943.0583(4), F.S.

⁵² Section 943.0583(6), F.S.

⁵³ Section 943.0583(2), F.S.

court are prohibited from charging a filing fee, service charge, or copy fee or any other charge for a petition for a human trafficking victim expunction.⁵⁴

When a criminal history record is ordered to be expunged, the record must be physically destroyed by any criminal justice agency possessing such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.⁵⁵ A human trafficking victim may lawfully deny or fail to acknowledge any expunged record unless he or she is applying for a job with a criminal justice agency or is a defendant in a subsequent criminal prosecution.⁵⁶ The criminal history record that has been expunged is considered confidential and exempt⁵⁷ from public records requirements.⁵⁸

Current law also provides that criminal intelligence⁵⁹ and criminal investigative information⁶⁰ is confidential and exempt from public records requirements. Such information includes:⁶¹

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;⁶²
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;⁶³ and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.⁶⁴

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

⁵⁴ Section 943.0583(2), F.S.

⁵⁵ Section 943.045(16), F.S.

⁵⁶ Section 943.0583(8)(b), F.S.

⁵⁷ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute. *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004). Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

⁵⁸ Section 119.071(2)(h), F.S.

⁵⁹ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁶⁰ Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

⁶¹ Ch. 2015-146 Laws of Fla.

⁶² See s. 787.06(3)(a), F.S.

⁶³ See s. 787.06(3)(b), (d), (f), and (g), F.S.

⁶⁴ *Id.*

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.

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,⁶⁵ abandonment,⁶⁶ or neglect⁶⁷ of children under ch. 39, F.S.,⁶⁸
- Any offense constituting domestic violence;⁶⁹
- Murder;
- Manslaughter;
- Aggravated cyberstalking;⁷⁰
- Kidnapping;
- False imprisonment;⁷¹
- Human trafficking;⁷²
- Sexual battery;
- Lewd or lascivious offenses;⁷³

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ 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.

⁶⁸ Chapter 39, F.S., relates to dependency proceedings.

⁶⁹ 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.

⁷⁰ 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.

⁷¹ 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.

⁷² 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.

⁷³ 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

- Child abuse or neglect;^{74, 75}
- Use of a child in a sexual performance;⁷⁶ or
- Computer pornography⁷⁷, 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.

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 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.

⁷⁴ 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.

⁷⁵ 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.

⁷⁶ 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.

⁷⁷ 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.

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 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 Expunction

The bill amends s. 943.0583, F.S., expanding the application of the human trafficking victim expunction provision. A victim of human trafficking will now be authorized to expunge a criminal history record related to any offense listed in s. 775.084(1)(b)1., F.S., provided the victim was not found guilty of, or pled guilty or nolo contendere to, such an offense.

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:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the court to apply amendment standards for when and what kind of relief to grant for protecting vulnerable victims and witnesses, and expands the application of the human trafficking victim expunction provision. 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 may result in an indeterminate negative impact on the courts, state attorneys, defense counsel, and civil litigators.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
