

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 Criminal Justice

BILL: SB 1208

INTRODUCER: Senator Burgess

SUBJECT: Depositions of Witnesses in Criminal Proceedings

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1208 amends s. 92.55, F.S., to prohibit depositions of any victim or any witness younger than the age of 18, any person who has intellectual disabilities, or any person who is a victim or witness in criminal cases where certain offenses are alleged, unless good cause is shown.

The offenses are:

- Any offense constituting domestic violence as defined in s. 741.28, F.S.
- Aggravated cyberstalking under s. 784.048, F.S.
- Custody offenses under ch. 787, F.S.
- Human trafficking under s. 787.06, F.S.
- Human smuggling under s. 787.07, F.S.
- Sexual battery under s. 794.011, F.S.
- Lewd or lascivious offenses under s. 800.04, F.S.
- Child abuse or neglect of a child under s. 827.03, F.S.
- Promotion of or use of a child in a sexual performance under s. 827.071, F.S.
- Computer pornography, prohibited computer usage, or traveling to meet a minor under s. 847.0135, F.S.
- Transmission of pornography by electronic device or equipment under s. 847.0137, F.S., or Transmission of material harmful to a minor under s. 847.0138, F.S.

The bill provides for a motion hearing and considerations for the court to determine whether to allow depositions of the specified witnesses in the listed cases.

The bill has an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill becomes effective October 1, 2023.

II. Present Situation:

Section 92.55, F.S., contains protections for certain crime victims or witnesses during the criminal case process. Specifically, this section of law provides varying types of protection for vulnerable victims and witnesses who are either underage or intellectually disabled. Section 92.55(1), F.S., contains the following definitions:

- “Sexual offense victim or witness” means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense; and
- “Sexual offense” means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I), F.S.

A conviction of the offenses specified in s. 775.21(4)(a)1., F.S., and s. 943.0435(1)(h)1.a.(I), F.S., results in the person being designated as a sexual predator or sexual offender, respectively, under the criteria set forth in those sections of law.

Section 92.55, F.S., provides that a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court under s. 914.17, F.S., for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness, may file a motion with the court for an order to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court.¹

Such court 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.²

In ruling upon the motion, the court must consider:

- The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant’s presence, and any other fact that the court deems relevant;
- The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as a consequence of the defendant’s presence, and any other fact that the court deems relevant; or
- The age of the sexual offense victim or witness when the sexual offense occurred, the relationship of the sexual offense 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 sexual offense victim or witness as a consequence of the defendant’s presence, and any other fact that the court deems relevant.³

Additionally, the court may enter orders:

¹ Section 92.55(2), F.S.

² Section 92.55(2)(a), F.S.

³ Section 92.55(3), F.S.

- Limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed;
- Prohibiting depositions of the victim or witness;
- Requiring the submission of questions before the examination of the victim or witness;
- Setting the place and conditions for interviewing the victim or witness; or for conducting any other proceeding; or
- Permitting or prohibiting the attendance of any person at any proceeding.

The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.⁴

Section 92.55(5), F.S., provides that the court may set other conditions it finds just or appropriate, including the use and assistance of a therapy or facility dog.

III. Effect of Proposed Changes:

The bill amends s. 92.55, F.S., to prohibit depositions of any victim or any witness younger than the age of 18, any person who has intellectual disabilities, or any person who is a victim or witness in criminal cases where certain offenses are alleged, unless good cause is shown.

The offenses are listed in the bill as:

- Any offense constituting domestic violence as defined in s. 741.28, F.S.
- Aggravated cyberstalking under s. 784.048, F.S.
- Custody offenses under ch. 787, F.S.
- Human trafficking under s. 787.06, F.S.
- Human smuggling under s. 787.07, F.S.
- Sexual battery under s. 794.011, F.S.
- Lewd or lascivious offenses under s. 800.04, F.S.
- Child abuse or neglect of a child under s. 827.03, F.S.
- Promotion of or use of a child in a sexual performance under s. 827.071, F.S.
- Computer pornography, prohibited computer usage, or traveling to meet a minor under s. 847.0135, F.S.
- Transmission of pornography by electronic device or equipment under s. 847.0137, F.S. or Transmission of material harmful to a minor under s. 847.0138, F.S.

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

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

In ruling upon the motion the court may consider:

- The mental and physical age and maturity of the victim or witness.

⁴ Section 92.55(4), F.S.

- The nature and duration of the offense.
- The relationship of the victim or witness to the defendant.
- The complexity of the issues involved.
- Whether the victim or witness would suffer moderate psychological harm as a consequence of being compelled to testify at a deposition.
- The functional capacity of the victim or witness if he or she has an intellectual disability.
- The willingness of the victim or witness to testify at an examination, an interview, or a hearing.
- Any other fact that the court deems relevant.

The motion may be filed by the victim, the witness, or the victim's or witness's attorney, parent, legal guardian, or guardian ad litem; the defendant or the defendant's counsel in a criminal proceeding; or the prosecuting authority.

The court must make specific written findings of fact, on the record, as to the basis for its ruling.

The bill becomes effective October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

It is possible that the time spent by the courts holding hearings on whether to grant depositions in the circumstances specified in the bill will have an impact on judicial resources. However, it is also possible that if fewer depositions are taken in the criminal cases specified in the bill, related costs such as court reporting and transcribing, as well as prosecutor and public defender time spent in depositions will off-set some of the expense of the motion hearings.

VI. Technical Deficiencies:

The bill amends s. 92.55, F.S., relating to judicial or other proceedings involving a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness.

The language contained in the bill relates to any victim or witness under the age of 18, any person who has intellectual disabilities, or *any person who is a victim or witness*.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 92.55 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.