

By Senator Osgood

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1                   A bill to be entitled  
2       An act relating to deposing victims of certain  
3       offenses; creating s. 787.301, F.S.; prohibiting the  
4       deposing of an individual who, at the time of the  
5       request for the deposition, is 17 years of age or  
6       younger and has been a victim of human trafficking or  
7       specified sexual offenses; providing exceptions;  
8       prohibiting a court from approving such depositions  
9       unless it makes certain findings; requiring a court to  
10      issue a protective order for the victim if the court  
11      approves a deposition of the victim; providing  
12      requirements for such depositions; authorizing the  
13      protective order to include specified conditions;  
14      providing that an individual who is 17 years of age or  
15      younger at the time of the request for a deposition  
16      and who is a victim in a prosecution of human  
17      trafficking or specified sexual offenses is considered  
18      a sensitive witness; providing requirements that must  
19      be met before taking the deposition of a sensitive  
20      witness; providing procedures if certain matters  
21      pertaining to the deposition cannot be resolved;  
22      authorizing a victim to have counsel and a victim  
23      advocate present at the deposition; requiring that the  
24      victim be treated as a party at hearings on motions  
25      pertaining to the deposition; authorizing the victim  
26      to apply to the court for a protective order;  
27      requiring that a subpoena or other notice of the  
28      deposition given to the victim include specified  
29      information; authorizing a court to issue protective

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orders, which may include specified conditions;  
authorizing the court to consider any factor it deems  
relevant in ruling on the protective order;  
prohibiting certain self-represented defendants from  
directly deposing a victim; requiring the court to  
appoint counsel for the defendant for such  
depositions; providing an effective date.

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

Section 1. Section 787.301, Florida Statutes, is created to  
read:

787.301 Deposing victims of human trafficking or specified  
sexual offenses.-

(1) (a) An individual who is 17 years of age or younger at  
the time of a request for a deposition and who is a victim of  
any of the following offenses may not be deposed, except by  
agreement of the parties or after approval of the court pursuant  
to paragraph (b):

1. Section 787.06, relating to human trafficking.

2. Section 794.011, relating to sexual battery.

3. Section 800.04, relating to lewd or lascivious offenses  
committed upon or in the presence of persons younger than 16  
years of age.

(b) A court may not approve a deposition under this  
subsection unless the court finds that the testimony of the  
victim is necessary to assist the trial, that the evidence  
sought is not reasonably available by other means, and that the  
probative value of the testimony outweighs the potential

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59 detriment to the victim of being deposed. In determining whether  
60 to approve a deposition under this subsection, the court must  
61 consider the availability of recorded statements of the victim  
62 and the complexity of the issues involved.

63 (c) If a deposition is approved under this subsection, the  
64 court must issue a protective order to protect the victim from  
65 emotional harm, annoyance, embarrassment, oppression, invasion  
66 of privacy, undue burden of expense, or waste of time. If a  
67 deposition is approved, the court must appoint an attorney to  
68 represent the victim at the deposition. The defendant may not be  
69 physically present at the deposition, unless agreed to by the  
70 parties or upon entry of an order by the court for good cause  
71 shown.

72 (d) The protective order may include, but need not be  
73 limited to, any of the following conditions, that the  
74 deposition:

75 1. Be taken only on specified terms and conditions,  
76 including a designation of the time, place, and manner of the  
77 deposition;

78 2. Be taken only by written questions;

79 3. Specifically include, exclude, or be limited to inquiry  
80 into certain matters;

81 4. Be conducted with only such persons present as the court  
82 may designate; or

83 5. Be sealed after it has been taken, whether a tape or  
84 transcript, until further order of the court.

85 (2) (a) An individual who is 17 years of age or younger at  
86 the time of a request for a deposition and who is a victim in a  
87 prosecution for any of the following offenses is considered a

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88 sensitive witness:

89 1. Section 787.06, relating to human trafficking.

90 2. Section 794.011, relating to sexual battery.

91 3. Section 800.04, relating to lewd or lascivious offenses  
92 committed upon or in the presence of persons younger than 16  
93 years of age.

94 (b) Before taking the deposition of a sensitive witness,  
95 the party seeking to take the deposition must consult with the  
96 other parties and the victim in an effort to reach an agreement  
97 on the time, place, manner, and scope of the deposition. If an  
98 agreement cannot be reached, the party seeking to take the  
99 deposition must so advise the court and specify the matters that  
100 are in dispute. The court then shall issue an order regulating  
101 the taking of the deposition, including, in its discretion, a  
102 requirement that the deposition be taken in the presence of a  
103 judge or special master.

104 (c) A victim may have counsel present at the deposition and  
105 may make legal objections to questions. The victim must be  
106 treated as a party at hearings on motions pertaining to the  
107 deposition. A victim may have a victim advocate present during  
108 the deposition. The victim may apply to the court for a  
109 protective order if he or she believes that he or she is being  
110 subjected to harassment or intimidation. A subpoena issued, or  
111 any other notice of the deposition given to the victim, must  
112 include notice that the victim may have the assistance of  
113 counsel for the deposition, may have a victim advocate present  
114 for the deposition, and may seek a protective order.

115 (d)1. At the request of a party or the victim, for good  
116 cause shown, the court may issue any protective order that

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117 justice requires to protect a party or the victim from emotional  
118 harm, annoyance, embarrassment, oppression, invasion of privacy,  
119 undue burden of expense, or waste of time. A protective order  
120 may include, but need not be limited to, any of the following  
121 conditions, that the deposition:

122 a. Be taken only on specified terms and conditions,  
123 including a designation of the time, place, and manner of the  
124 deposition;

125 b. Be taken only by written questions;

126 c. Specifically include, exclude, or be limited to inquiry  
127 into certain matters;

128 d. Be conducted with only such persons present as the court  
129 may designate;

130 e. Be sealed after it has been taken, whether a tape or  
131 transcript, until further order of the court; or

132 f. Not be taken.

133 2. In ruling on such protective order, the court may  
134 consider any factor it deems relevant, including, but not  
135 limited to:

136 a. The age, health, level of intellectual function, and  
137 emotional condition of the victim;

138 b. Whether the victim has knowledge material to the proof  
139 of or defense to any essential element of the crime;

140 c. Whether the victim has provided a full written, taped,  
141 or transcribed account of his or her proposed testimony at  
142 trial;

143 d. Whether the victim's testimony will relate only to a  
144 peripheral issue in the case; or

145 e. Whether an informal interview or telephone conference

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146 with the victim will suffice for the purposes of discovery in  
147 the case.

148 (3) A self-represented defendant in a prosecution for an  
149 offense specified in subsection (1) or subsection (2) may not  
150 depose the victim directly. In such a case, the court must  
151 appoint counsel for the defendant for the purpose of such  
152 deposition.

153 Section 2. This act shall take effect July 1, 2023.