

By Senator Berman

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1                   A bill to be entitled  
2       An act relating to victims of sexual violence or  
3       sexual exploitation; creating s. 960.31, F.S.;  
4       providing definitions; providing that a victim of  
5       sexual violence or sexual exploitation has the right  
6       to prevent any person or entity from disclosing or  
7       disseminating information or records that might  
8       identify him or her as a victim; prohibiting a person  
9       or an entity in possession of information or records  
10      that might identify an individual as a victim of  
11      sexual violence or sexual exploitation from disclosing  
12      or disseminating such information or records without  
13      first obtaining the express written consent of the  
14      victim; authorizing an aggrieved person to initiate a  
15      civil action for an injunction against certain persons  
16      or entities; providing procedures for initiating such  
17      civil action; providing that an aggrieved party who  
18      prevails in seeking an injunction is entitled to  
19      reasonable attorney fees and costs; providing that  
20      specified rights may be waived only by express action;  
21      providing applicability; providing construction;  
22      providing an effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

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26       Section 1. Section 960.31, Florida Statutes, is created to  
27 read:

28       960.31 Rights of victims of sexual violence or sexual  
29 exploitation.-

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30 (1) As used in this section, the term:

31 (a) "Public proceeding" includes any public proceeding and  
32 is not limited to a criminal justice proceeding.

33 (b) "School" includes any public or private K-12 school,  
34 Florida College System institution, or state university.

35 (c) "Sexual violence or sexual exploitation" means any  
36 conduct that would constitute a sexual offense prohibited under  
37 s. 787.06, chapter 794, chapter 796, chapter 800, or s. 827.071,  
38 and for which there has been official verification that an  
39 applicable crime has occurred as described in s. 119.071(2)(j)1.

40 (d) "Victim" includes minors and adults, including adult  
41 survivors of sexual violence or sexual exploitation suffered as  
42 a minor. The term also includes a person who suffers direct or  
43 threatened physical, psychological, or financial harm as a  
44 result of the commission or attempted commission of an act that  
45 would constitute sexual violence or sexual exploitation,  
46 including delinquent acts and conduct. The term also includes  
47 the victim's lawful representative, the parent or guardian of a  
48 minor victim, and the next of kin of a homicide victim, except  
49 upon a showing that the interests of such individual would be in  
50 actual or potential conflict with the interests of the victim.  
51 The term does not include the accused.

52 (2) (a) A victim of sexual violence or sexual exploitation  
53 has the right to prevent any person or entity from disclosing or  
54 disseminating information or records that are exempt from  
55 disclosure under chapter 119 and which might identify him or her  
56 as the victim of sexual violence or sexual exploitation to any  
57 member of the public, including in response to a public records  
58 request or in any public proceeding, in accordance with s. 16,

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59 Art. I of the State Constitution.

60 (b) A person or an entity in possession of information or  
61 records that are exempt from disclosure under chapter 119 and  
62 that might identify an individual as a victim of sexual violence  
63 or sexual exploitation may not disclose or disseminate such  
64 information or records without first obtaining the express  
65 written consent of the victim, including in response to a public  
66 records request or in any public proceeding, in accordance with  
67 s. 16, Art. I of the State Constitution.

68 (3) For purposes of this section, conduct that would  
69 constitute sexual violence or sexual exploitation is deemed to  
70 have occurred at the moment an act that would constitute sexual  
71 violence or sexual exploitation is committed, regardless of  
72 whether the accused perpetrator is identified, arrested,  
73 prosecuted, or convicted, and regardless of whether a law  
74 enforcement officer or law enforcement agency confirms by  
75 probable cause that a crime occurred.

76 (4) This section applies to any act that would constitute  
77 sexual violence or sexual exploitation reported by, or on behalf  
78 of, a victim. Such an act is deemed reported if the victim, or  
79 someone acting on the victim's behalf, reports the act to any of  
80 the following:

81 (a) A law enforcement officer or law enforcement agency,  
82 including a law enforcement officer or a law enforcement agency  
83 of a school.

84 (b) A licensed medical provider or facility, including by  
85 seeking a sexual assault examination or any other medical care  
86 related to any act that would constitute sexual violence or  
87 sexual exploitation.

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88 (c) A mental health provider, including any victim  
89 counselor or victim advocate, or any school counseling service.

90 (d) A school employee in a teaching or administrative  
91 position.

92 (e) A school employee whose job functions include oversight  
93 of on-campus housing at any school.

94 (5) A person aggrieved by a violation of this section may  
95 initiate a civil action for an injunction against a person or an  
96 entity, excluding a public official, a public employee, or a  
97 public entity, to prevent or remedy further violation of this  
98 section.

99 (a) Except as provided in paragraph (d), at least 5  
100 business days before instituting such action, and as a condition  
101 precedent to such an action, the aggrieved person shall serve  
102 notice in writing on the intended respondent, specifying that  
103 the identity of the aggrieved person qualifies for protection  
104 under this section based on the criteria specified under  
105 subsection (4), without the need to specify which criteria apply  
106 or provide any documentary proof. The Florida Rules of Evidence  
107 shall govern the authentication and admissibility of proof of  
108 such written notice.

109 (b) In response to such a notice, the recipient of the  
110 notice may avoid the civil action for injunction by certifying  
111 to the aggrieved party by means of a sworn written statement all  
112 of the following:

113 1. An intent to maintain as confidential all information  
114 and records, including original source information and records,  
115 identifying the aggrieved person as the victim of any act that  
116 would constitute sexual violence or sexual exploitation.

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117       2. Confirmation that the recipient of the notice has taken  
118 all necessary affirmative action to withdraw any such  
119 information and records that were previously obtained and made  
120 accessible to the public.

121       3. That the recipient of the notice has provided written  
122 notice to any person or entity to whom such information and  
123 documents were previously disseminated that the victim's rights  
124 under this section apply and that the information and documents  
125 may not be further disseminated. Copies of such notices required  
126 by this subparagraph must be provided to the aggrieved person as  
127 part of the certification.

128       (c) If the recipient of the notice timely provides written  
129 certification as provided in paragraph (b), the aggrieved person  
130 may not initiate an injunction proceeding unless at least one of  
131 the following applies:

132       1. The violation of this section was knowing and malicious  
133 and was committed with the intent to cause harm to the aggrieved  
134 party.

135       2. The violation of this section was done with reckless  
136 indifference to the harm caused to the aggrieved party.

137       3. The person or entity in violation of this section was  
138 the perpetrator of the act that would constitute sexual violence  
139 or sexual exploitation or was otherwise legally responsible for  
140 the conduct.

141       (d) Paragraph (a) does not apply if the person or entity in  
142 violation of this section commits a new violation of this  
143 section after receiving notice in accordance with paragraph (a)  
144 for a previous violation.

145       (e) In addition to injunctive relief, an aggrieved party

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146 who prevails in seeking an injunction under this subsection is  
147 entitled to an award of reasonable attorney fees and costs  
148 incurred in enforcing rights under this section.

149 (6) The remedies provided in this section are cumulative to  
150 other existing remedies.

151 (7) The rights guaranteed under this section may be waived  
152 only by express action. An action by a victim may not be deemed  
153 an implicit waiver of his or her rights under this act.

154 (8) This act does not apply:

155 (a) In any case in which a law enforcement agency, after  
156 investigation, concludes that the reported conduct of sexual  
157 violence or sexual exploitation was intentionally false.

158 (b) To a mandatory report of child abuse under chapter 39.

159 (9) The granting of the rights enumerated in this section  
160 to a victim may not be construed to deny or impair any other  
161 rights possessed by a victim.

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