

20161294er

1
2 An act relating to victim and witness protection;
3 amending ss. 92.53 and 92.54, F.S.; increasing the
4 maximum age at which a victim or witness may be
5 allowed to testify via closed circuit television
6 rather than in a courtroom in certain circumstances;
7 amending s. 92.55, F.S.; revising the definition of
8 the term "sexual offense victim or witness";
9 increasing the maximum age of victims and witnesses
10 for whom the court may enter protective orders;
11 authorizing certain advocates to file motions for such
12 orders on behalf of certain persons; amending s.
13 787.06, F.S.; prohibiting certain defenses to
14 prosecution under certain circumstances; amending s.
15 794.022, F.S.; including human trafficking and lewd
16 and lascivious offenses in the rules of evidence
17 applicable to sexually-related offenses; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 92.53, Florida Statutes, is amended to
23 read:

24 92.53 Videotaping the testimony of a victim or witness
25 under age 18 ~~16~~ or who has an intellectual disability.—

26 (1) On motion and hearing in camera and a finding that
27 there is a substantial likelihood that a victim or witness who
28 is under the age of 18 ~~16~~ or who has an intellectual disability
29 as defined in s. 393.063 would suffer at least moderate

20161294er

30 emotional or mental harm due to the presence of the defendant if
31 such victim or witness is required to testify in open court, or
32 is unavailable as defined in s. 90.804(1), the trial court may
33 order the videotaping of the testimony of the victim or witness
34 in a case, whether civil or criminal in nature, in which
35 videotaped testimony is to be used at trial in lieu of trial
36 testimony in open court.

37 (2) The motion may be filed by:

38 (a) The victim or witness, or the victim's or witness's
39 attorney, parent, legal guardian, or guardian ad litem;

40 (b) A trial judge on his or her own motion;

41 (c) Any party in a civil proceeding; or

42 (d) The prosecuting attorney or the defendant, or the
43 defendant's counsel.

44 (3) The judge shall preside, or shall appoint a special
45 master to preside, at the videotaping unless:

46 (a) The child or the person who has the intellectual
47 disability is represented by a guardian ad litem or counsel;

48 (b) The representative of the victim or witness and the
49 counsel for each party stipulate that the requirement for the
50 presence of the judge or special master may be waived; and

51 (c) The court finds at a hearing on the motion that the
52 presence of a judge or special master is not necessary to
53 protect the victim or witness.

54 (4) The defendant and the defendant's counsel must be
55 present at the videotaping unless the defendant has waived this
56 right. The court may require the defendant to view the testimony
57 from outside the presence of the child or the person who has an
58 intellectual disability by means of a two-way mirror or another

20161294er

59 similar method that ensures that the defendant can observe and
60 hear the testimony of the victim or witness in person, but the
61 victim or witness cannot hear or see the defendant. The
62 defendant and the attorney for the defendant may communicate by
63 any appropriate private method.

64 (5) Any party, or the court on its own motion, may request
65 the aid of an interpreter, as provided in s. 90.606, to aid the
66 parties in formulating methods of questioning the child or
67 person who has the intellectual disability and in interpreting
68 the answers of the child or person during proceedings conducted
69 under this section.

70 (6) The motion referred to in subsection (1) may be made at
71 any time with reasonable notice to each party to the cause, and
72 videotaping of testimony may be made any time after the court
73 grants the motion. The videotaped testimony is admissible as
74 evidence in the trial of the cause; however, such testimony is
75 not admissible in any trial or proceeding in which such witness
76 testifies by use of closed circuit television pursuant to s.
77 92.54.

78 (7) The court shall make specific findings of fact, on the
79 record, as to the basis for its ruling under this section.

80 Section 2. Section 92.54, Florida Statutes, is amended to
81 read:

82 92.54 Use of closed circuit television in proceedings
83 involving a victim or witness under the age of 18 ~~16~~ or who has
84 an intellectual disability.—

85 (1) Upon motion and hearing in camera and upon a finding
86 that there is a substantial likelihood that a victim or witness
87 under the age of 18 ~~16~~ or who has an intellectual disability

20161294er

88 will suffer at least moderate emotional or mental harm due to
89 the presence of the defendant if such victim or witness is
90 required to testify in open court, or is unavailable as defined
91 in s. 90.804(1), the trial court may order that the testimony of
92 the victim or witness be taken outside of the courtroom and
93 shown by means of closed circuit television.

94 (2) The motion may be filed by the victim or witness; the
95 attorney, parent, legal guardian, or guardian ad litem of the
96 victim or witness; the prosecutor; the defendant or the
97 defendant's counsel; or the trial judge on his or her own
98 motion.

99 (3) Only the judge, the prosecutor, the defendant, the
100 attorney for the defendant, the operators of the videotape
101 equipment, an interpreter, and some other person who, in the
102 opinion of the court, contributes to the well-being of the child
103 or the person who has an intellectual disability and who will
104 not be a witness in the case may be in the room during the
105 recording of the testimony.

106 (4) During the victim's or witness's testimony by closed
107 circuit television, the court may require the defendant to view
108 the testimony from the courtroom. In such a case, the court
109 shall permit the defendant to observe and hear the testimony of
110 the victim or witness, but must ensure that the victim or
111 witness cannot hear or see the defendant. The defendant's right
112 to assistance of counsel, which includes the right to immediate
113 and direct communication with counsel conducting cross-
114 examination, must be protected and, upon the defendant's
115 request, such communication must be provided by any appropriate
116 electronic method.

20161294er

117 (5) The court shall make specific findings of fact, on the
118 record, as to the basis for its ruling under this section.

119 Section 3. Section 92.55, Florida Statutes, is amended to
120 read:

121 92.55 Judicial or other proceedings involving victim or
122 witness under the age of 18 ~~16~~, a person who has an intellectual
123 disability, or a sexual offense victim or witness; special
124 protections; use of registered service or therapy animals.—

125 (1) For purposes of this section, the term:

126 (a) "Sexual offense victim or witness" means a person who
127 was under the age of 18 ~~16~~ when he or she was the victim of or a
128 witness to a sexual offense.

129 (b) "Sexual offense" means any offense specified in s.
130 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

131 (2) Upon motion of any party, upon motion of a parent,
132 guardian, attorney, ~~or~~ guardian ad litem, or other advocate
133 appointed by the court under s. 914.17 for a victim or witness
134 under the age of 18 ~~16~~, a person who has an intellectual
135 disability, or a sexual offense victim or witness, or upon its
136 own motion, the court may enter any order necessary to protect
137 the victim or witness in any judicial proceeding or other
138 official proceeding from severe emotional or mental harm due to
139 the presence of the defendant if the victim or witness is
140 required to testify in open court. Such orders must relate to
141 the taking of testimony and include, but are not limited to:

142 (a) Interviewing or the taking of depositions as part of a
143 civil or criminal proceeding.

144 (b) Examination and cross-examination for the purpose of
145 qualifying as a witness or testifying in any proceeding.

20161294er

146 (c) The use of testimony taken outside of the courtroom,
147 including proceedings under ss. 92.53 and 92.54.

148 (3) In ruling upon the motion, the court shall consider:

149 (a) The age of the child, the nature of the offense or act,
150 the relationship of the child to the parties in the case or to
151 the defendant in a criminal action, the degree of emotional
152 trauma that will result to the child as a consequence of the
153 defendant's presence, and any other fact that the court deems
154 relevant;

155 (b) The age of the person who has an intellectual
156 disability, the functional capacity of such person, the nature
157 of the offenses or act, the relationship of the person to the
158 parties in the case or to the defendant in a criminal action,
159 the degree of emotional trauma that will result to the person as
160 a consequence of the defendant's presence, and any other fact
161 that the court deems relevant; or

162 (c) The age of the sexual offense victim or witness when
163 the sexual offense occurred, the relationship of the sexual
164 offense victim or witness to the parties in the case or to the
165 defendant in a criminal action, the degree of emotional trauma
166 that will result to the sexual offense victim or witness as a
167 consequence of the defendant's presence, and any other fact that
168 the court deems relevant.

169 (4) In addition to such other relief provided by law, the
170 court may enter orders limiting the number of times that a
171 child, a person who has an intellectual disability, or a sexual
172 offense victim or witness may be interviewed, prohibiting
173 depositions of the victim or witness, requiring the submission
174 of questions before the examination of the victim or witness,

20161294er

175 setting the place and conditions for interviewing the victim or
176 witness or for conducting any other proceeding, or permitting or
177 prohibiting the attendance of any person at any proceeding. The
178 court shall enter any order necessary to protect the rights of
179 all parties, including the defendant in any criminal action.

180 (5) The court may set any other conditions it finds just
181 and appropriate when taking the testimony of a child victim or
182 witness or a sexual offense victim or witness, including the use
183 of a service or therapy animal that has been evaluated and
184 registered according to national standards, in any proceeding
185 involving a sexual offense. When deciding whether to permit a
186 child victim or witness or sexual offense victim or witness to
187 testify with the assistance of a registered service or therapy
188 animal, the court shall consider the age of the child victim or
189 witness, the age of the sexual offense victim or witness at the
190 time the sexual offense occurred, the interests of the child
191 victim or witness or sexual offense victim or witness, the
192 rights of the parties to the litigation, and any other relevant
193 factor that would facilitate the testimony by the child victim
194 or witness or sexual offense victim or witness.

195 Section 4. Subsection (10) is added to section 787.06,
196 Florida Statutes, to read:

197 787.06 Human trafficking.—

198 (10) A victim's lack of chastity or the willingness or
199 consent of a victim is not a defense to prosecution under this
200 section if the victim was under 18 years of age at the time of
201 the offense.

202 Section 5. Section 794.022, Florida Statutes, is amended to
203 read:

20161294er

204 794.022 Rules of evidence.—

205 (1) The testimony of the victim need not be corroborated in
206 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

207 (2) Specific instances of prior consensual sexual activity
208 between the victim and any person other than the offender may
209 ~~shall~~ not be admitted into evidence in a prosecution under s.
210 787.06, s. 794.011, or s. 800.04. However, such evidence may be
211 admitted if it is first established to the court in a proceeding
212 in camera that such evidence may prove that the defendant was
213 not the source of the semen, pregnancy, injury, or disease; or,
214 when consent by the victim is at issue, such evidence may be
215 admitted if it is first established to the court in a proceeding
216 in camera that such evidence tends to establish a pattern of
217 conduct or behavior on the part of the victim which is so
218 similar to the conduct or behavior in the case that it is
219 relevant to the issue of consent.

220 (3) Notwithstanding any other provision of law, reputation
221 evidence relating to a victim's prior sexual conduct or evidence
222 presented for the purpose of showing that manner of dress of the
223 victim at the time of the offense incited the sexual battery may
224 ~~shall~~ not be admitted into evidence in a prosecution under s.
225 787.06, s. 794.011, or s. 800.04.

226 (4) When consent of the victim is a defense to prosecution
227 under s. 787.06, s. 794.011, or s. 800.04, evidence of the
228 victim's mental incapacity or defect is admissible to prove that
229 the consent was not intelligent, knowing, or voluntary; and the
230 court shall instruct the jury accordingly.

231 (5) An offender's use of a prophylactic device, or a
232 victim's request that an offender use a prophylactic device, is

20161294er

233 not, by itself, relevant to either the issue of whether or not
234 the offense was committed or the issue of whether or not the
235 victim consented.

236 Section 6. This act shall take effect July 1, 2016.