

By Senator Diaz

36-00320A-22

2022772__

1 A bill to be entitled
 2 An act relating to vulnerable victims and witnesses;
 3 amending s. 92.55, F.S.; revising the standard for
 4 orders to protect certain testifying victims and
 5 witnesses; prohibiting depositions of certain victims
 6 and witnesses in certain proceedings without a showing
 7 of good cause; authorizing the court to allow such
 8 depositions under certain circumstances; revising
 9 factors to be considered by a court in a motion
 10 seeking to protect a victim or witness; revising
 11 provisions related to available relief; requiring the
 12 court to appoint a guardian ad litem or other advocate
 13 for the deponent under certain circumstances;
 14 authorizing the court to request the aid of an
 15 interpreter; requiring the court to make specific
 16 findings of fact on the record for certain orders and
 17 rulings; making technical changes; amending s.
 18 943.0583, F.S.; revising the applicability of
 19 provisions relating to human trafficking victims
 20 seeking expunction of certain records; providing an
 21 effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 92.55, Florida Statutes, is amended to
 26 read:

27 92.55 Judicial or other proceedings involving certain
 28 victims and witnesses ~~victim or witness under the age of 18, a~~
 29 ~~person who has an intellectual disability, or a sexual offense~~

36-00320A-22

2022772__

30 ~~victim or witness~~; special protections; use of therapy animals
31 or facility dogs.—

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

33 (a) "Facility dog" means a dog that has been trained,
34 evaluated, and certified as a facility dog pursuant to industry
35 standards and provides unobtrusive emotional support to children
36 and adults in facility settings.

37 (c)~~(a)~~ "Sexual offense victim or witness" means a person
38 who was under the age of 18 when he or she was the victim of or
39 a witness to a sexual offense.

40 (b) "Sexual offense" means any offense specified in s.
41 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

42 (d) "Therapy animal" means an animal that has been trained,
43 evaluated, and certified as a therapy animal pursuant to
44 industry standards by an organization that certifies animals as
45 appropriate to provide animal therapy.

46 (2) Upon motion of any party;i~~r~~ upon motion of a parent,
47 guardian, attorney, guardian ad litem, or other advocate
48 appointed by the court ~~under s. 914.17~~ for a victim or witness
49 under the age of 18, a person who has an intellectual
50 disability, or a sexual offense victim or witness;i~~r~~ or upon its
51 own motion, the court may enter any order necessary to protect
52 the person ~~victim or witness~~ in any judicial proceeding or other
53 official proceeding from moderate ~~severe~~ emotional or mental
54 harm ~~due to the presence of the defendant if the victim or~~
55 ~~witness is required to testify in open court.~~ Such orders must
56 relate to the taking of testimony and include, but are not
57 limited to:

58 (a) Interviewing or the taking of depositions as part of a

36-00320A-22

2022772__

59 civil or criminal proceeding.

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

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

64 (3) (a) Depositions are not allowed, except upon a showing
65 of good cause, of victims or witnesses younger than the age of
66 18, persons who have intellectual disabilities, or sexual
67 offense victims or witnesses in proceedings involving any of the
68 following:

69 1. Abuse, abandonment, or neglect of children under chapter
70 39.

71 2. Any offense constituting domestic violence as defined in
72 s. 741.28.

73 3. Murder under s. 782.04.

74 4. Manslaughter under s. 782.07.

75 5. Aggravated cyberstalking under s. 784.048.

76 6. Kidnapping under s. 787.01.

77 7. False imprisonment under s. 787.02.

78 8. Human trafficking under s. 787.06.

79 9. Sexual battery under s. 794.011.

80 10. Lewd or lascivious offenses under s. 825.1025.

81 11. Child abuse or neglect of a child under s. 827.03.

82 12. Use of a child in a sexual performance under s.
83 827.071.

84 13. Computer pornography under s. 847.0135 or the
85 transmission of pornography by electronic device or equipment
86 under s. 847.0137.

87 (b) Upon written motion and written findings that a

36-00320A-22

2022772__

88 deposition is necessary to assist a trial, that the evidence
 89 sought is not reasonably available by any other means, and that
 90 the probative value of the testimony outweighs the potential
 91 detriment to the person to be deposed, the court may authorize
 92 the taking of a deposition and may order protections deemed
 93 necessary, including those provided in this section.

94 (4)~~(3)~~ In ruling upon a ~~the~~ motion filed under this
 95 section, the court may ~~shall~~ consider:

96 (a) The age of the victim or witness. ~~child,~~

97 (b) The nature of the offense or act.~~7~~

98 (c) The complexity of the issues involved.

99 (d) The relationship of the victim or witness ~~child~~ to the
 100 parties in the case or to the defendant in a criminal action.~~7~~

101 (e) The degree of emotional or mental harm ~~trauma~~ that will
 102 result to ~~the child~~ as a consequence of the examination,
 103 interview, or testimony. ~~defendant's presence, and~~

104 (f) The functional capacity of the victim or witness if he
 105 or she has an intellectual disability.

106 (g) The age of the sexual offense victim or witness when
 107 the sexual offense occurred.

108 (h) Any other fact that the court deems relevant.~~7~~

109 ~~(b) The age of the person who has an intellectual~~
 110 ~~disability, the functional capacity of such person, the nature~~
 111 ~~of the offenses or act, the relationship of the person to the~~
 112 ~~parties in the case or to the defendant in a criminal action,~~
 113 ~~the degree of emotional trauma that will result to the person as~~
 114 ~~a consequence of the defendant's presence, and any other fact~~
 115 ~~that the court deems relevant; or~~

116 ~~(c) The age of the sexual offense victim or witness when the~~

36-00320A-22

2022772__

117 ~~sexual offense occurred, the relationship of the sexual offense~~
118 ~~victim or witness to the parties in the case or to the defendant~~
119 ~~in a criminal action, the degree of emotional trauma that will~~
120 ~~result to the sexual offense victim or witness as a consequence~~
121 ~~of the defendant's presence, and any other fact that the court~~
122 ~~deems relevant.~~

123 (5)~~(4)~~ In addition to such other relief provided by law,
124 the court may enter orders it deems just and appropriate for the
125 protection of limiting the number of times that a child, a
126 person who has an intellectual disability, or a sexual offense
127 victim or witness, including limiting the number of times a
128 victim or witness may be interviewed, limiting the length and
129 scope of a deposition, requiring a deposition to be taken only
130 by written questions, requiring a deposition to be in the
131 presence of a trial judge or magistrate, sealing the tape or
132 transcript of a deposition until further order of the court,
133 allowing use of a therapy animal or facility dog ~~prohibiting~~
134 ~~depositions of the victim or witness,~~ requiring the submission
135 of questions before the examination of the victim or witness,
136 setting the place and conditions for interviewing the victim or
137 witness or for conducting any other proceeding, or permitting or
138 prohibiting the attendance of any person at any proceeding. The
139 court shall enter any order necessary to protect the rights of
140 all parties, including the defendant in any criminal action.

141 (6) Section 794.022 applies to depositions taken pursuant
142 to this section. If a deposition is taken pursuant to this
143 section, the court must appoint a guardian ad litem or other
144 advocate pursuant to s. 914.17 to represent the deponent for the
145 purposes of the deposition if the deponent does not already have

36-00320A-22

2022772__

146 counsel.

147 (7) The court, on its own motion or that of any party, may
148 request the aid of an interpreter, as provided in s. 90.606, to
149 aid the parties in formulating methods of questioning the person
150 who has an intellectual disability or the sexual offense victim
151 or witness and in interpreting his or her answers during
152 proceedings conducted under this section.

153 (8) The court shall make specific findings of fact on the
154 record as to the basis for its orders and rulings under this
155 section

156 ~~(5) The court may set any other conditions it finds just~~
157 ~~and appropriate when taking the testimony of a victim or witness~~
158 ~~under the age of 18, a person who has an intellectual~~
159 ~~disability, or a sexual offense victim or witness, including the~~
160 ~~use of a therapy animal or facility dog, in any proceeding~~
161 ~~involving a sexual offense or child abuse, abandonment, or~~
162 ~~neglect.~~

163 ~~(a) When deciding whether to permit a victim or witness~~
164 ~~under the age of 18, a person who has an intellectual~~
165 ~~disability, or a sexual offense victim or witness to testify~~
166 ~~with the assistance of a therapy animal or facility dog, the~~
167 ~~court shall consider the age of the child victim or witness, the~~
168 ~~age of the sexual offense victim or witness at the time the~~
169 ~~sexual offense occurred, the interests of the child victim or~~
170 ~~witness or sexual offense victim or witness, the rights of the~~
171 ~~parties to the litigation, and any other relevant factor that~~
172 ~~would facilitate the testimony by the victim or witness under~~
173 ~~the age of 18, person who has an intellectual disability, or~~
174 ~~sexual offense victim or witness.~~

36-00320A-22

2022772__

175 ~~(b) For purposes of this subsection the term:~~

176 ~~1. "Facility dog" means a dog that has been trained,~~
177 ~~evaluated, and certified as a facility dog pursuant to industry~~
178 ~~standards and provides unobtrusive emotional support to children~~
179 ~~and adults in facility settings.~~

180 ~~2. "Therapy animal" means an animal that has been trained,~~
181 ~~evaluated, and certified as a therapy animal pursuant to~~
182 ~~industry standards by an organization that certifies animals as~~
183 ~~appropriate to provide animal therapy.~~

184 Section 2. Subsection (3) of section 943.0583, Florida
185 Statutes, is amended to read:

186 943.0583 Human trafficking victim expunction.—

187 (3) A person who is a victim of human trafficking may
188 petition for the expunction of a criminal history record
189 resulting from the arrest or filing of charges for one or more
190 offenses committed or reported to have been committed while the
191 person was a victim of human trafficking, which offense was
192 committed or reported to have been committed as a part of the
193 human trafficking scheme of which the person was a victim or at
194 the direction of an operator of the scheme, including, but not
195 limited to, violations under chapters 796 and 847, without
196 regard to the disposition of the arrest or of any charges.
197 However, this section does not apply to any offense listed in s.
198 775.084(1)(b)1. if the defendant was found guilty of, or pled
199 guilty or nolo contendere to, any such offense. Determination of
200 the petition under this section should be by a preponderance of
201 the evidence. A conviction expunged under this section is deemed
202 to have been vacated due to a substantive defect in the
203 underlying criminal proceedings. If a person is adjudicated not

36-00320A-22

2022772__

204 guilty by reason of insanity or is found to be incompetent to
205 stand trial for any such charge, the expunction of the criminal
206 history record may not prevent the entry of the judgment or
207 finding in state and national databases for use in determining
208 eligibility to purchase or possess a firearm or to carry a
209 concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18
210 U.S.C. s. 922(t), nor shall it prevent any governmental agency
211 that is authorized by state or federal law to determine
212 eligibility to purchase or possess a firearm or to carry a
213 concealed firearm from accessing or using the record of the
214 judgment or finding in the course of such agency's official
215 duties.

216 Section 3. This act shall take effect upon becoming a law.