

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

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26 subpoena or other notice of the deposition given to  
27 the victim include specified information; authorizing  
28 a court to issue protective orders, which may include  
29 specified conditions; authorizing the court to  
30 consider any factor it deems relevant in ruling on the  
31 protective order; prohibiting certain self-represented  
32 defendants from directly deposing a victim; requiring  
33 the court to appoint counsel for the defendant for  
34 such depositions; providing an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Section 787.301, Florida Statutes, is created  
39 to read:

40 787.301 Deposing victims of human trafficking or specified  
41 sexual offenses.—

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

47 1. Section 787.06, relating to human trafficking.

48 2. Section 794.011, relating to sexual battery.

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

51 years of age.

52 (b) A court may not approve a deposition under this  
53 subsection unless the court finds that the testimony of the  
54 victim is necessary to assist the trial, that the evidence  
55 sought is not reasonably available by any other means, and that  
56 the probative value of the testimony outweighs the potential  
57 detriment to the victim of being deposed. In determining whether  
58 to approve a deposition under this subsection, the court must  
59 consider the availability of recorded statements of the victim  
60 and the complexity of the issues involved.

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

70 (d) The protective order may include, but need not be  
71 limited to, any of the following conditions:

72 1. That the deposition be taken only on specified terms  
73 and conditions, including a designation of the time, place, and  
74 manner of the deposition;

75 2. That the deposition be taken only by written questions;

76 3. That the deposition specifically include, exclude, or  
 77 be limited to inquiry into certain matters;

78 4. That the deposition be conducted with only such persons  
 79 present as the court may designate; or

80 5. That after the deposition has been taken, the tape or  
 81 transcript be sealed until further order of the court.

82 (2)(a) An individual who is 17 years of age or younger at  
 83 the time of a request for a deposition and who is a victim in a  
 84 prosecution for any of the following offenses is considered a  
 85 sensitive witness:

86 1. Section 787.06, relating to human trafficking.

87 2. Section 794.011, relating to sexual battery.

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

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

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

112 (d)1. At the request of a party or the victim, for good  
113 cause shown, the court may issue any protective order that  
114 justice requires to protect a party or the victim from emotional  
115 harm, unnecessary annoyance, embarrassment, oppression, invasion  
116 of privacy, undue burden of expense, or waste of time. A  
117 protective order may include, but need not be limited to, any of  
118 the following conditions:

119 a. That the deposition be taken only on specified terms  
120 and conditions, including a designation of the time, place, and  
121 manner of the deposition;

122 b. That the deposition be taken only by written questions;

123 c. That the deposition specifically include, exclude, or  
124 be limited to inquiry into certain matters;

125 d. That the deposition be conducted with only such persons

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126 present as the court may designate;  
127 e. That after the deposition has been taken, the tape or  
128 transcript be sealed until further order of the court; or  
129 f. That the deposition not be taken.  
130 2. In ruling on such protective order, the court may  
131 consider any factor it deems relevant, including, but not  
132 limited to:  
133 a. The age, health, level of intellectual function, and  
134 emotional condition of the victim;  
135 b. Whether the victim has knowledge material to the proof  
136 of or defense to any essential element of the crime;  
137 c. Whether the victim has provided a full written, taped,  
138 or transcribed account of his or her proposed testimony at  
139 trial;  
140 d. Whether the victim's testimony will relate only to a  
141 peripheral issue in the case; or  
142 e. Whether an informal interview or telephone conference  
143 with the victim will suffice for the purposes of discovery in  
144 the case.  
145 (3) A self-represented defendant in a prosecution for an  
146 offense specified in subsection (1) or subsection (2) may not  
147 depose the victim directly. In such a case, the court must  
148 appoint counsel for the defendant for the purpose of such  
149 deposition.  
150 Section 2. This act shall take effect July 1, 2021.