

## CHAPTER 2016-199

### Committee Substitute for Senate Bill No. 1294

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

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

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

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

(1) On motion and hearing in camera and a finding that there is a substantial likelihood that a victim or witness who is under the age of 18 ~~16~~ or who has an intellectual disability as defined in s. 393.063 would suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness is required to testify in open court, or is unavailable as defined in s. 90.804(1), the trial court may order the videotaping of the testimony of the victim or witness in a case, whether civil or criminal in nature, in which videotaped testimony is to be used at trial in lieu of trial testimony in open court.

(2) The motion may be filed by:

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

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

(c) Any party in a civil proceeding; or

(d) The prosecuting attorney or the defendant, or the defendant’s counsel.

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

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

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

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

(4) The defendant and the defendant's counsel must be present at the videotaping unless the defendant has waived this right. The court may require the defendant to view the testimony from outside the presence of the child or the person who has an intellectual disability by means of a two-way mirror or another similar method that ensures that the defendant can observe and hear the testimony of the victim or witness in person, but the victim or witness cannot hear or see the defendant. The defendant and the attorney for the defendant may communicate by any appropriate private method.

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

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

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

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

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

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that a victim or witness under the age of 18 ~~16~~ or who has an intellectual disability will suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness is required to testify in open court, or is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of the victim or witness be taken outside of the courtroom and shown by means of closed circuit television.

(2) The motion may be filed by the victim or witness; the attorney, parent, legal guardian, or guardian ad litem of the victim or witness; the

prosecutor; the defendant or the defendant’s counsel; or the trial judge on his or her own motion.

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

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

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

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

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

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

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

(b) “Sexual offense” means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

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

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

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

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

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

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

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

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

(4) In addition to such other relief provided by law, the court may enter orders limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed, prohibiting depositions of the victim or witness, requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.

(5) The court may set any other conditions it finds just and appropriate when taking the testimony of a child victim or witness or a sexual offense victim or witness, including the use of a service or therapy animal that has been evaluated and registered according to national standards, in any proceeding involving a sexual offense. When deciding whether to permit a child victim or witness or sexual offense victim or witness to testify with the assistance of a registered service or therapy animal, the court shall consider the age of the child victim or witness, the age of the sexual offense victim or witness at the time the sexual offense occurred, the interests of the child victim or witness or sexual offense victim or witness, the rights of the parties

to the litigation, and any other relevant factor that would facilitate the testimony by the child victim or witness or sexual offense victim or witness.

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

787.06 Human trafficking.—

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

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

794.022 Rules of evidence.—

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

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

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

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

(5) An offender’s use of a prophylactic device, or a victim’s request that an offender use a prophylactic device, is not, by itself, relevant to either the issue of whether or not the offense was committed or the issue of whether or not the victim consented.

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

Approved by the Governor April 6, 2016.

Filed in Office Secretary of State April 6, 2016.