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**HOUSE BILL NO. 481**

Offered January 18, 2000

*A BILL to amend and reenact §§ 18.2-67.9 and 19.2-11.01 of the Code of Virginia, relating to testimony by child victims and witnesses.*

Patrons—Watts, Almand, Amundson, Brink, McEachin, Moran and Scott; Senators: Howell and Puller

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-67.9 and 19.2-11.01 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-67.9. Testimony by child victims and witnesses using two-way closed-circuit television.

A. In any criminal proceeding, including preliminary hearings, involving an alleged offense ~~against in~~ *which a child is the victim of or witness to any felony or any* ; ~~relating to~~ a violation of the laws pertaining to kidnapping (§ 18.2-47 et seq.), criminal sexual assault (§ 18.2-61 et seq.) or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, the attorney for the Commonwealth or the defendant may apply for an order from the court that the testimony of the alleged victim or a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The party seeking such order shall apply for the order at least seven days before the trial date or at least seven days before such other preliminary proceeding to which the order is to apply.

A1. The provisions of this section shall apply to the following:

1. An alleged victim who was fourteen years of age or under at the time of the alleged offense and is sixteen or under at the time of the trial; and

2. Any child witness who is fourteen years of age or under at the time of the trial.

B. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsections A and A1 if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;

2. The child's substantial inability to communicate about the offense; or

3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the Commonwealth and the defendant's attorney shall be present in the room with the child, and the child shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the child during his testimony shall be those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

E. Notwithstanding any other provision of law, none of the cost of the two-way closed-circuit television shall be assessed against the defendant.

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter.

Following a crime, law-enforcement personnel shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime

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60 victims.

61 1. Victim and witness protection.

62 a. In order that victims and witnesses receive protection from harm and threats of harm arising out of  
63 their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information  
64 as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or  
65 local program providing protection, and shall be assisted in obtaining this protection from the  
66 appropriate authorities.

67 b. Victims and witnesses shall be provided, where available, a separate waiting area during court  
68 proceedings that affords them privacy and protection from intimidation.

69 2. Financial assistance.

70 a. Victims shall be informed of financial assistance and social services available to them as victims  
71 of a crime, including information on their possible right to file a claim for compensation from the Crime  
72 Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2 and on other  
73 available assistance and services.

74 b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary  
75 purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

76 c. Victims shall be advised that restitution is available for damages or loss resulting from an offense  
77 and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1  
78 (§ 19.2-368.1 et seq.) of Title 19.2, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other  
79 applicable laws of the Commonwealth.

80 3. Notices.

81 a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to  
82 ensure that employers of victims and witnesses will cooperate with the criminal justice process in order  
83 to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii)  
84 advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for  
85 appearing in court pursuant to a summons or subpoena.

86 b. Victims shall receive advance notification when practicable from the attorney for the  
87 Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of  
88 any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current  
89 addresses and telephone numbers.

90 c. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in  
91 whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to  
92 the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and  
93 telephone numbers in writing.

94 d. Victims shall be advised that, in order to protect their right to receive notices and offer input, all  
95 agencies and persons having such duties must have current victim addresses and telephone numbers  
96 given by the victims.

97 4. Victim input.

98 a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim  
99 impact statement prior to sentencing of a defendant and may provide information to any individual or  
100 agency charged with investigating the social history of a person or preparing a victim impact statement  
101 under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

102 b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding  
103 pursuant to the provisions of § 19.2-265.01.

104 c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant  
105 to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the  
106 offense.

107 5. Courtroom assistance.

108 a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be  
109 disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the  
110 conduct of the criminal proceeding.

111 b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in  
112 accordance with §§ 19.2-164 and 19.2-164.1.

113 c. Victims of certain sexual offenses shall be advised that there may be a closed preliminary hearing  
114 in accordance with § 18.2-67.8 and, *in the trial of any felony and certain other offenses*, if a victim was  
115 fourteen years of age or younger on the date of the offense and is sixteen or under at the time of the  
116 trial *and if a witness to the offense is fourteen years of age or younger at the time of trial*, two-way  
117 closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

118 B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological  
119 or economic harm as a direct result of the commission of a felony or of assault and battery in violation  
120 of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation  
121 of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated

122 in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal  
123 guardian of such a person who is a minor, or (iv) a spouse, parent or legal guardian of such a person  
124 who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not  
125 mean a parent, child, spouse or legal guardian who commits a felony or other enumerated criminal  
126 offense against a victim as defined in clause (i) of this subsection.

127 C. Officials and employees of the judiciary, including court services units, law-enforcement agencies,  
128 the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided  
129 with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness  
130 assistance program. Each agency, officer or employee who has a responsibility or responsibilities to  
131 victims under this chapter or other applicable law shall make reasonable efforts to become informed  
132 about these responsibilities and to ensure that victims and witnesses receive such information and  
133 services to which they may be entitled under applicable law, provided that no liability or cause of action  
134 shall arise from the failure to make such efforts or from the failure of such victims or witnesses to  
135 receive any such information or services.