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HOUSE BILL NO. 2932

Offered January 21, 2005

A BILL to amend the Code of Virginia by adding a section numbered 18.2-67.9:1, relating to use of videotape statements for certain crimes against children.

Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-67.9:1 as follows:

§ 18.2-67.9:1. Use of videotaped statements of complaining witnesses as evidence.

A. In any criminal proceeding involving alleged abuse or neglect of a child pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 or Article 4 (§ 18.2-362 et seq.) of Chapter 8 of this title, a recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence if the requirements of subsection B are met and the court determines that:

1. The alleged victim is the age of 12 or under at the time the statement is offered into evidence;

2. The recording is both visual and oral, and every person appearing in, and every voice recorded on, the tape is identified;

3. The recording is on videotape or was recorded by other electronic means capable of making an accurate recording;

4. The recording has not been altered;

5. No attorney for any party to the proceeding was present when the statement was made;

6. The person conducting the interview of the alleged victim was authorized to do so by the child-protective services coordinator of a local department of social services;

7. All persons present at the time the statement was taken are available to testify or be cross-examined at the proceeding when the recording is offered; and

8. The alleged victim testifies at the proceeding, or testifies by means of closed-circuit television.

B. A recorded statement may be admitted into evidence as provided in subsection A if the recorded statement is shown to possess particularized guarantees of trustworthiness and reliability, including, but not limited to:

1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

4. The timing of the child's statement;

5. Whether the child was suffering pain or distress when making the statement;

6. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

7. Whether the statement has a "ring of verity," has internal consistency or coherence, and uses terminology appropriate to the child's age;

8. Whether the statement is spontaneous or directly responsive to questions; and

9. Whether the statement is responsive to suggestive or other leading questions.

C. A recorded statement may not be admitted under this section unless the proponent of the recording notifies the adverse party of his intent to offer the recording at least 10 days prior to the proceeding and the adverse party is given sufficient and timely opportunity to view the recording before it is shown in the proceeding.

INTRODUCED

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