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HOUSE BILL NO. 657

Offered January 8, 2014

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A BILL to amend and reenact §§ 18.2-67.9 and 19.2-11.01 of the Code of Virginia, relating to testimony using two-way closed-circuit television; certain offenses.

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 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 victims and child witnesses using two-way closed-circuit television.

A. The provisions of this section shall apply to 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 to a witness who is fourteen years of age or under at the time of the trial.

In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child, 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; or involving an alleged murder of a person of any age, 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.

B. The court may order that the testimony of the *victim or child witness* be taken by closed-circuit television as provided in subsection A if it finds that the *victim or child witness* 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 *victim or child witness* will suffer severe emotional trauma from so testifying.

The provisions of subdivisions 1 and 2 shall apply only to an alleged victim who was 14 years of age or under at the time of the alleged offense and is 16 or under at the time of the trial and to a witness who is 14 years of age or under at the time of the trial.

Any ruling on the ~~child's~~ *victim's or child witness'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 *victim or child witness*, and the *victim or child witness* shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the *victim or child witness* 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 *victim or child witness*.

D. The ~~child's~~ *victim's or child witness'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

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59 assistance required by this chapter, including verification that the standardized form listing the specific
60 rights afforded to crime victims has been received by the victim.

61 As soon as practicable after identifying a victim of a crime, the investigating law-enforcement agency
62 shall provide the victim with a standardized form listing the specific rights afforded to crime victims.
63 The form shall include a telephone number by which the victim can receive further information and
64 assistance in securing the rights afforded crime victims, the name, address and telephone number of the
65 office of the attorney for the Commonwealth, the name, address and telephone number of the
66 investigating law-enforcement agency, and a summary of the victim's rights under § 40.1-28.7:2.

67 1. Victim and witness protection and law-enforcement contacts.

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

73 b. Victims and witnesses shall be provided, where available, a separate waiting area during court
74 proceedings that affords them privacy and protection from intimidation, and that does not place the
75 victim in close proximity to the defendant or the defendant's family.

76 2. Financial assistance.

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

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

83 c. Victims shall be advised that restitution is available for damages or loss resulting from an offense
84 and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§
85 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other
86 applicable laws of the Commonwealth.

87 3. Notices.

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

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

97 c. Victims shall receive notification, if requested, subject to such reasonable procedures as the
98 Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and
99 disposition of any appeal or habeas corpus proceeding involving their case.

100 d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in
101 whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to
102 the provisions of §§ 53.1-133.02 and 53.1-160 or (ii) when an accused is released on bail, if they have
103 provided their names, current addresses and telephone numbers in writing. Such notification may be
104 provided through the Virginia Statewide VINE (Victim Information and Notification Everyday) System
105 or other similar electronic or automated system.

106 e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all
107 agencies and persons having such duties must have current victim addresses and telephone numbers
108 given by the victims. Victims shall also be advised that any such information given shall be confidential
109 as provided by § 19.2-11.2.

110 4. Victim input.

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

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

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

120 d. In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall

consult with the victim either verbally or in writing (i) to inform the victim of the contents of a proposed plea agreement and (ii) to obtain the victim's views about the disposition of the case, including the victim's views concerning dismissal, pleas, plea negotiations and sentencing. However, nothing in this section shall limit the ability of the attorney for the Commonwealth to exercise his discretion on behalf of the citizens of the Commonwealth in the disposition of any criminal case. The court shall not accept the plea agreement unless it finds that, except for good cause shown, the Commonwealth has complied with clauses (i) and (ii). Good cause shown shall include, but not be limited to, the unavailability of the victim due to incarceration, hospitalization, failure to appear at trial when subpoenaed, or change of address without notice.

Upon the victim's written request, the victim shall be notified in accordance with subdivision A 3 b of any proceeding in which the plea agreement will be tendered to the court.

The responsibility to consult with the victim under this subdivision shall not confer upon the defendant any substantive or procedural rights and shall not affect the validity of any plea entered by the defendant.

5. Courtroom assistance.

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

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

c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on the date of the offense and is 16 or under at the time of the trial, or a witness to the offense is 14 years of age or younger at the time of the trial, that two-way closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

6. Post trial assistance.

a. Within 30 days of receipt of a victim's written request after the final trial court proceeding in the case, the attorney for the Commonwealth shall notify the victim in writing, of (i) the disposition of the case, (ii) the crimes of which the defendant was convicted, (iii) the defendant's right to appeal, if known, and (iv) the telephone number of offices to contact in the event of nonpayment of restitution by the defendant.

b. If the defendant has been released on bail pending the outcome of an appeal, the agency that had custody of the defendant immediately prior to his release shall notify the victim as soon as practicable that the defendant has been released.

c. If the defendant's conviction is overturned, and the attorney for the Commonwealth decides to retry the case or the case is remanded for a new trial, the victim shall be entitled to the same rights as if the first trial did not take place.

B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated 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 guardian of such a person who is a minor, (iv) for the purposes of subdivision A 4 of this section only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life, or (v) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

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