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SENATE BILL NO. 358

Offered January 13, 2016

Prefiled January 11, 2016

A BILL to amend the Code of Virginia by adding a section numbered 19.2-268.3, relating to hearsay exceptions regarding the admissibility of statements by children in certain cases.

Patrons—McDougle and Wexton

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 19.2-268.3 as follows:

§ 19.2-268.3. Admissibility of statements by children in sexual abuse, physical violence, or neglect cases.

A. An out-of-court statement made by a child who is under 13 years of age at the time of trial or hearing describing any sexual abuse of the child or describing any act of physical violence or neglect directed against the child shall not be excluded as hearsay under Rule 2:802 of the Rules of Supreme Court of Virginia if both of the following apply:

1. The court finds, in a hearing conducted prior to a trial, that the time, content, and totality of circumstances surrounding the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors:

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

b. The age, maturity, and mental state of the child;

c. The credibility of the person testifying about the statement;

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

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

f. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act; and

2. The child:

a. Testifies or is available to testify at the proceedings; or

b. Is declared by the court to be unavailable as a witness; when the child has been declared unavailable, such statement may be admitted pursuant to this section only if there is corroborative evidence of the act of sexual abuse, physical violence, or neglect.

B. A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at least 14 days in advance of the proceedings.

C. This section shall not be construed to limit the admission of any statement offered under any other hearsay exception or applicable rule of evidence.