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SENATE BILL NO. 89

Offered January 10, 2018

Prefiled December 11, 2017

A *BILL to amend and reenact § 63.2-1521 of the Code of Virginia, relating to civil proceedings involving child abuse or neglect; testimony of children.*

Patrons—Surovell; Delegate: Kory

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That § 63.2-1521 of the Code of Virginia is amended and reenacted as follows:****§ 63.2-1521. Testimony by child using two-way closed-circuit television.**

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1, 16.1-283, or § 20-107.2, the child's attorney or guardian ad litem or, if the child has been committed to the custody of a local department, the attorney for the local department may apply for an order from the court that the testimony of the alleged victim or of a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The person seeking such order shall apply for the order at least seven days before the trial date.

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

1. An alleged victim who was ~~fourteen~~ 14 years of age or under on the date of the alleged offense and is ~~sixteen~~ 16 or under at the time of the trial; and

2. Any child witness who is ~~fourteen~~ 14 years of age or under at the time of the trial.

C. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsections A and B 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.

D. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the child and the defendant's attorney and, if the child has been committed to the custody of a local board, the attorney for the local board 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 the guardian ad litem, 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.

E. 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.

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