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HOUSE BILL NO. 2129

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 15, 2023)

(Patron Prior to Substitute—Delegate Delaney)

A BILL to amend and reenact § 18.2-67.9 of the Code of Virginia, relating to testimony by child victims and witnesses using two-way closed-circuit television; standard.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-67.9 of the Code of Virginia is amended and reenacted as follows:

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

A. The provisions of this section shall apply to an alleged victim who was 14 16 years of age or younger at the time of the alleged offense and is 16 years of age or younger at the time of the trial and to a witness who is 14 16 years of age or younger 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 pursuant to Article 3 (§ 18.2-47 et seq.) of Chapter 4, criminal sexual assault pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4, commercial sex trafficking or prostitution offenses pursuant to Article 3 (§ 18.2-346 et seq.) of Chapter 8, or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8, 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 child be taken by closed-circuit television as provided in subsection A 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~~ *The court's finding, by a preponderance of the evidence, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so that is more than de minimis as a result of testifying in the defendant's presence and not the courtroom generally.*

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.