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HOUSE BILL NO. 1389

Offered January 25, 1994

A BILL to amend and reenact §§ 18.2-67.9 and 63.1-248.13:1 of the Code of Virginia, relating to use of closed circuit television.

Patrons—Crittenden, Christian, Connally, Cooper, Keating, Puller and Van Landingham

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-67.9 and 63.1-248.13:1 of the Code of Virginia are amended and reenacted as follows:

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

A. In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child the age of twelve or under 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, the attorney for the Commonwealth or the defendant may apply for an order from the court that the child's testimony 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~~shall order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that (i) *the child's testimony is necessary or relevant to the facts or issues of the case*, (ii) *the use of testimony by closed circuit television does not alter the trial process*, and (iii) the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, ~~for due to~~ any of the following ~~reasons~~conditions :

1. ~~The child's persistent refusal to testify despite judicial requests to do so;~~

2. ~~The child's substantial inability~~ *child is substantially unable* to communicate about the offense or *the issues about which he is to testify in open court*; ~~or~~

3. ~~The~~ 2. *There is a substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying in open court or his testimony could be substantially altered due to intimidation of the child by the presence of the defendant; or*

3. *The circumstances surrounding the incident or case warrant the use of testimony by closed-circuit television.*

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.

F. *Closed-circuit television testimony may be allowed for any witness over the age of twelve in the court's discretion.*

§ 63.1-248.13:1. Testimony by child using two-way closed-circuit television.

A. In any civil proceeding involving alleged abuse or neglect of a child the age of twelve or under pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 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 the Department of Social Services, the attorney for the local Department of Social Services may apply for an order from the court that the child's testimony 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 court ~~may~~shall order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that (i) *the child's testimony is necessary or relevant to the facts or*

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HB1389

60 *issues of the case, (ii) the use of video does not alter the trial process and (iii) the child is unavailable*
61 *to testify in open court in the presence of the defendant, the jury, the judge, and the public, for due to*
62 *any of the following reasons conditions:*

63 1. ~~The child's persistent refusal to testify despite judicial requests to do so;~~

64 2. ~~The child's substantial inability~~ *child is substantially unable* to communicate about the offense or
65 *issues about which he is to testify in open court; or*

66 3. ~~The~~ *There is a* substantial likelihood, based upon expert opinion testimony, that the child will
67 *suffer severe* emotional trauma from ~~so~~ *testifying in open court, or his testimony could be substantially*
68 *altered due to intimidation of the child by the presence of the defendant; or*

69 3. *The circumstances surrounding the incident or case warrant the use of testimony by closed-circuit*
70 *television.*

71 Any ruling on the child's unavailability under this subsection shall be supported by the court with
72 findings on the record or with written findings in a court not of record.

73 C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for
74 the child and the defendant's attorney and, if the child has been committed to the custody of the
75 Department of Social Services, the attorney for the local Department of Social Services shall be present
76 in the room with the child, and the child shall be subject to direct and cross-examination. The only other
77 persons allowed to be present in the room with the child during his testimony shall be the guardian ad
78 litem, those persons necessary to operate the closed-circuit equipment, and any other person whose
79 presence is determined by the court to be necessary to the welfare and well-being of the child.

80 D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the
81 defendant, jury, judge and public to view. The defendant shall be provided with a means of private,
82 contemporaneous communication with his attorney during the testimony.

83 E. *Closed-circuit television testimony may be allowed for any witness over the age of twelve in the*
84 *court's discretion.*