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HOUSE BILL NO. 2058

Offered January 20, 1999

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

Patrons—Watts, Behm, Cantor, Christian, Darner, Hamilton, Jones, J.C., McDonnell, Puller and Purkey;
Senators: Couric, Edwards, Houck, Howell, Lucas and Miller, Y.B.

Referred to Committee for Courts of Justice

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 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 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.

A1. The provisions of this section shall apply to the following:

1. The alleged victim who was fourteen years of age or under at the time of the alleged offense, and is seventeen or under at the time of the trial; and

2. Any child witness, who was fourteen years of age or under at the time of the alleged offense, and is seventeen or under at the time of the trial.

B. The court may order that the testimony of the child be taken by closed-circuit television as provided in ~~subsection~~ *subsections A and A1* 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.

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.

INTRODUCED

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