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HOUSE BILL NO. 2058

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 17, 1999)

(Patron Prior to Substitute—Delegate Watts)

*A BILL to amend and reenact §§ 16.1-252, 18.2-67.9, 19.2-11.01 and 63.1-248.13:1 of the Code of Virginia, relating to testimony by child victims using two-way-closed-circuit television.***Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-252, 18.2-67.9, 19.2-11.01 and 63.1-248.13:1 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-252. Preliminary removal order; hearing.

A. A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

B. Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing, (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child, and (iii) notice that child support will be considered if a determination is made that the child must be removed from the home.

C. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. If the child is ~~twelve~~ *was fourteen* years of age or under *on the date of the alleged offense and is sixteen or under at the time of the hearing*, 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 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 provisions of § 63.1-248.13:1 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty-eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

E. In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition; and

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

F. If the court determines that pursuant to subsection E hereof the removal of the child is proper, the court shall:

1. Order that the child be placed in the care and custody of a suitable person, with consideration being given to placement in the care and custody of a nearest kin, including grandparents, or personal friend or, if such placement is not available, in the care and custody of a suitable agency;

2. Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis, if such visitation would not endanger the child's life or health; and

60 3. Order that the parent or other legally obligated person pay child support pursuant to § 16.1-290.

61 In addition, the court may enter a preliminary protective order pursuant to § 16.1-253 imposing
62 requirements and conditions as specified in that section which the court deems appropriate for protection
63 of the welfare of the child.

64 G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the
65 allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of
66 abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person
67 responsible for the care and custody of the child, the child's guardian ad litem or the local department of
68 social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory
69 hearing to be held within thirty days of the date of the initial preliminary removal hearing. The
70 adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been
71 proven by a preponderance of the evidence. Parties who are present at the preliminary removal order
72 hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present
73 shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered,
74 although a party to the preliminary removal order hearing fails to appear and is not represented by
75 counsel, provided personal or substituted service was made on the person, or the court determines that
76 such person cannot be found, after reasonable effort, or in the case of a person who is without the
77 Commonwealth, the person cannot be found or his post office address cannot be ascertained after
78 reasonable effort.

79 The preliminary removal order and any preliminary protective order issued shall remain in full force
80 and effect pending the adjudicatory hearing.

81 H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed
82 from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant
83 to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal
84 order hearing and shall be held within seventy-five days of the preliminary removal order hearing. If an
85 adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be
86 scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal
87 order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are
88 not present shall be summoned to appear as provided in § 16.1-263.

89 I. A person having legal custody of a child as defined in § 16.1-228 (i) shall not be required to
90 comply with the requirements of this section in order to redetermine where and with whom the child
91 shall live, notwithstanding that the child had been placed with a natural parent.

92 J. Violation of any order issued pursuant to this section shall constitute contempt of court.

93 § 18.2-67.9. Testimony by child victims using two-way closed-circuit television.

94 A. In any criminal proceeding, including preliminary hearings, involving an alleged offense against a
95 child ~~the age of twelve or under~~, relating to a violation of the laws pertaining to kidnapping (§ 18.2-47
96 et seq.), criminal sexual assault (§ 18.2-61 et seq.) or family offenses pursuant to Article 4 (§ 18.2-362
97 et seq.) of Chapter 8 of Title 18.2, the attorney for the Commonwealth or the defendant may apply for
98 an order from the court that the ~~child's~~ *testimony of the alleged victim or a child witness* be taken in a
99 room outside the courtroom and be televised by two-way closed-circuit television. The party seeking
100 such order shall apply for the order at least seven days before the trial date or at least seven days before
101 such other preliminary proceeding to which the order is to apply.

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

103 *1. An alleged victim who was fourteen years of age or under at the time of the alleged offense, and*
104 *is sixteen or under at the time of the trial; and*

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

106 B. The court may order that the testimony of the child be taken by closed-circuit television as
107 provided in ~~subsection~~ *subsections A and A1* if it finds that the child is unavailable to testify in open
108 court in the presence of the defendant, the jury, the judge, and the public, for any of the following
109 reasons:

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

111 2. The child's substantial inability to communicate about the offense; or

112 3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe
113 emotional trauma from so testifying.

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

116 C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for
117 the Commonwealth and the defendant's attorney shall be present in the room with the child, and the
118 child shall be subject to direct and cross-examination. The only other persons allowed to be present in
119 the room with the child during his testimony shall be those persons necessary to operate the
120 closed-circuit equipment, and any other person whose presence is determined by the court to be
121 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.

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter.

1. Victim and witness protection.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2 and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and telephone numbers in writing.

d. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims.

4. Victim input.

a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of § 19.2-265.01 unless excluded by the court as a material witness.

c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant

183 to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the
184 offense.

185 5. Courtroom assistance.

186 a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be
187 disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the
188 conduct of the criminal proceeding.

189 b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in
190 accordance with §§ 19.2-164 and 19.2-164.1.

191 c. Victims of certain sexual offenses shall be advised that there may be a closed preliminary hearing
192 in accordance with § 18.2-67.8 and, if a victim is ~~twelve~~ *was fourteen* years of age or younger *on the*
193 *date of the offense and is sixteen or under at the time of the trial*, two-way closed-circuit television may
194 be used in the taking of testimony in accordance with § 18.2-67.9.

195 B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological
196 or economic harm as a direct result of the commission of a felony or of assault and battery in violation
197 of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation
198 of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated
199 in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal
200 guardian of such a person who is a minor, or (iv) a spouse, parent or legal guardian of such a person
201 who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not
202 mean a parent, child, spouse or legal guardian who commits a felony or other enumerated criminal
203 offense against a victim as defined in subdivision (i) of this subsection.

204 C. Officials and employees of the judiciary, including court services units, law-enforcement agencies,
205 the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided
206 with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness
207 assistance program. Each agency, officer or employee who has a responsibility or responsibilities to
208 victims under this chapter or other applicable law shall make reasonable efforts to become informed
209 about these responsibilities and to ensure that victims and witnesses receive such information and
210 services to which they may be entitled under applicable law, provided that no liability or cause of action
211 shall arise from the failure to make such efforts or from the failure of such victims or witnesses to
212 receive any such information or services.

213 § 63.1-248.13:1. Testimony by child using two-way closed-circuit television.

214 A. In any civil proceeding involving alleged abuse or neglect of a child ~~the age of twelve or under~~
215 pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or
216 § 20-107.2, the child's attorney or guardian ad litem or, if the child has been committed to the custody
217 of the Department of Social Services, the attorney for the local Department of Social Services may
218 apply for an order from the court that the ~~child's~~ *testimony of the alleged victim or of a child witness* be
219 taken in a room outside the courtroom and be televised by two-way closed-circuit television. The person
220 seeking such order shall apply for the order at least seven days before the trial date.

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

222 *1. An alleged victim who was fourteen years of age or under on the date of the alleged offense, and*
223 *is sixteen or under at the time of the trial; and*

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

225 B. The court may order that the testimony of the child be taken by closed-circuit television as
226 provided in ~~subsection~~ *subsections A and A.1* if it finds that the child is unavailable to testify in open
227 court in the presence of the defendant, the jury, the judge, and the public, for any of the following
228 reasons:

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

230 2. The child's substantial inability to communicate about the offense; or

231 3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe
232 emotional trauma from so testifying.

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

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

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