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**SENATE BILL NO. 421**

Offered January 13, 2016

Prefiled January 12, 2016

A *BILL to amend the Code of Virginia by adding a section numbered 19.2-268.3, relating to hearsay exceptions regarding the admissibility of statements of children; sexual crimes.*

Patron—Wexton

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 19.2-268.3 as follows:****§ 19.2-268.3. Admissibility of out-of-court statements; certain minors.**

A. *In any prosecution for a violation of § 18.2-48 involving a minor victim; criminal sexual assault on a minor under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; commercial sex trafficking and prostitution crimes where the victim is a minor under Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2; a violation of § 18.2-361, 18.2-366, 18.2-370, 18.2-370.01, or 18.2-370.1, where the victim is a minor; a violation of § 18.2-370.6; or a violation of any statute involving child pornography, an out-of-court statement made by a child under the age of 10 years alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child by another, or witnessed by the child shall not be excluded as hearsay if:*

1. *The party seeking to introduce the evidence provides written notice to the court and the accused within 14 days of trial of its intent to use such evidence, along with a copy or summary of the out-of-court statement, and the court or person authorized to receive evidence finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement was made provide sufficient indicia of reliability, and*

2. *The child either (i) testifies at the proceedings or (ii) is unavailable as a witness and there is corroborative evidence of the act.*

*In determining whether the statement contains sufficient indicia of reliability, the trial court may employ any factor it deems appropriate, including but not limited to (i) the spontaneity of the statement; (ii) the lack of time to fabricate; (iii) the consistency and repetition of the statement and whether the child has recanted the statement; (iv) the mental state of the child; (v) the competency of the child to testify; (vi) the child's use of terminology unexpected of a child of similar age; (vii) the lack of a motive by the child to fabricate the statement; (viii) the lack of bias by the child; (ix) whether it is an embarrassing event the child would not normally relate; (x) the credibility of the person testifying to the statement; (xi) suggestiveness created by leading questions; (xii) whether an adult with custody or control of the child may be biased against the accused offender and may attempt to induce the child to fabricate allegations; and (xiii) corroboration of the statement by independent evidence.*

B. *This section shall not be construed to limit the admission of any statement offered under any other hearsay exception or applicable rule of evidence.*

C. *For purposes of this section:*

*"Out-of-court statement" includes video, audio, or other statements, recorded or otherwise.*

*"Unavailable" includes death, incompetency, removal from the Commonwealth, the child's inability to communicate about the offense because of fear or a similar reason, or the substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of closed circuit television.*

INTRODUCED

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