

1 HB434
2 218078-2
3 By Representative Coleman
4 RFD: Judiciary
5 First Read: 02-MAR-22

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 Relating to criminal procedure; to authorize the use
9 of video depositions by certain victims and witnesses of human
10 trafficking under certain conditions; and to authorize the
11 giving of testimony by closed circuit video equipment by
12 certain victims and witnesses of human trafficking under
13 certain conditions.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. (a) In any criminal prosecution under
16 Article 8 of Chapter 6 of Title 13A, Code of Alabama 1975, the
17 court, upon motion of the district attorney or Attorney
18 General, for good cause shown and after notice to the
19 defendant, may order the taking of a video deposition of a
20 victim of or witness to a crime without regard to the age of
21 the victim or witness.

22 (b) On any motion for a video deposition of the
23 victim or witness, the court shall consider the nature of the
24 offense, the nature of testimony that may be expected, and the
25 possible effect that the testimony in person at trial may have
26 on the victim or witness, along with any other relevant
27 matters that may be required by rule of the Supreme Court.

1 (c) During the recording of a video deposition
2 authorized pursuant to this section, the following persons
3 shall be in the room with the victim or witness:

4 (1) The prosecuting attorney.

5 (2) The attorney for the defendant.

6 (3) A person whose presence, in the judgment of the
7 court, contributes to the well-being of the victim or witness
8 and who has dealt with the victim or witness in a therapeutic
9 setting regarding the abuse, excluding staff, employees, or
10 subcontractors, or experts employed or contracted by the
11 prosecution.

12 (4) Additional persons, other than the defendant, in
13 the discretion of the court.

14 (d) Examination and cross-examination of the victim
15 or witness shall proceed at the taking of the video deposition
16 as though the victim or witness were testifying personally in
17 the trial of the case. The state shall provide the attorney
18 for the defendant with a copy of the video deposition at a
19 suitable and reasonable time prior to the trial of the case.
20 The court shall enter a protective order prohibiting the
21 attorney for the defendant from copying, reproducing, or
22 distributing the video deposition. Objections to the
23 introduction into the record of the deposition shall be heard
24 by the judge in whose presence the deposition was taken, and
25 unless the court determines that its introduction in lieu of
26 the victim's or witness's actual appearance as a witness at
27 the trial will unfairly prejudice the defendant, the video

1 deposition shall be entered into the record by the state in
2 lieu of the direct testimony of the victim or witness and
3 shall be viewed and heard at the trial of the case.

4 (e) For the purposes of this section, "video
5 deposition" means the recording of video, with sound, of
6 witness testimony made under oath to be entered in the record
7 in a judicial proceeding.

8 (f) The Supreme Court may adopt rules of procedure
9 regarding the taking and use of video depositions in criminal
10 proceedings and juvenile cases, as well as transcription of
11 video depositions in appeals of those cases.

12 (g) All costs associated with the recording of a
13 deposition ordered pursuant to this section shall be paid by
14 the state. The district attorney or Attorney General shall
15 submit all related cost bills to the state Comptroller for
16 approval and payment from the fund entitled Court Costs Not
17 Otherwise Provided For.

18 (h) All recordings of video depositions ordered
19 pursuant to this section shall be subject to any protective
20 order of the court for the purpose of protecting the privacy
21 of the victim or witness of the offense.

22 (i) When necessary, the operator of the equipment
23 used to record video depositions may also be in the room
24 during the taking of the deposition and the operator shall
25 make every effort to be unobtrusive.

26 (j) Only the court, the prosecuting attorney, and
27 the attorney for the defendant may question the victim or

1 witness. During the testimony of the victim or witness, the
2 defendant shall be provided access to view the testimony out
3 of the presence of the victim or witness and shall be allowed
4 to communicate with his or her attorney by any appropriate
5 election method.

6 (k) In circumstances where a defendant in a
7 proceeding has elected to proceed without counsel, the court
8 may appoint counsel for the defendant and may order counsel to
9 question the victim or witness on behalf of the pro se
10 defendant if the court finds that there is a substantial
11 likelihood that the victim or witness would experience
12 emotional harm if the defendant were allowed to question the
13 victim or witness.

14 Section 2. (a) In any criminal prosecution under
15 Article 8 of Chapter 6 of Title 13A, Code of ALabama 1975, the
16 court, on motion of the state or the defendant prior to the
17 trial of the case, may order that the testimony of any victim
18 of the crime or witness to the crime shall be viewed and heard
19 at trial by the court and the finder of fact by closed circuit
20 equipment. In ruling on the motion, the court shall take into
21 consideration the nature of the offense, the nature of
22 testimony that may be expected, and the possible effect that
23 the testimony in person at trial may have on the victim or
24 witness, along with any other relevant matters that may be
25 required by Supreme Court rule.

26 (b) If the court orders that the victim's or
27 witness's testimony in court shall be by closed circuit

1 equipment, the testimony shall be taken outside the courtroom
2 in the judge's chambers or in another suitable location
3 designated by the judge.

4 (c) Examination and cross-examination of the victim
5 or witness shall proceed as though the victim or witness was
6 testifying in the courtroom. The following individuals may be
7 present in the room with the victim or witness during his or
8 her testimony:

9 (1) The prosecuting attorney.

10 (2) The attorney of the defendant.

11 (3) A person whose presence, in the judgment of the
12 court, contributes to the well-being of the victim or witness
13 and who has dealt with the victim or witness in a therapeutic
14 setting regarding the abuse, excluding staff, employees, or
15 subcontractors, or experts employed or contracted by the
16 prosecution.

17 (4) In the discretion of the court, any additional
18 person, including the parent or legal guardian, except the
19 defendant.

20 (d) All costs incurred by the district attorney or
21 Attorney General to make it possible for the court and the
22 trier of the fact to view the testimony of the victim or
23 witness by closed circuit equipment as provided in this
24 section shall be paid by the state. The district attorney or
25 Attorney General shall submit all bills for costs to the state
26 Comptroller for approval and payment from the fund entitled
27 Court Costs Not Otherwise Provided For.

1 (e) The operators of the closed circuit equipment
2 may also be in the room and shall make every effort to be
3 unobtrusive.

4 (f) Only the court, the prosecuting attorney, and
5 the attorney for the defendant may question the victim or
6 witness. During the victim's or witness's testimony by closed
7 circuit equipment, the defendant, the judge, and the jury
8 shall remain in the courtroom. The video feed showing the
9 victim or witness shall remain visible to the defendant, the
10 judge, and the jury at all times during the testimony and
11 cross-examination of the victim or witness.

12 (g) The judge and the defendant shall be allowed to
13 communicate with the attorneys in the room where the victim or
14 witness is testifying by any appropriate electronic method.
15 The party making the motion that the testimony shall be by
16 closed circuit equipment shall make all necessary arrangements
17 regarding the equipment and the operation thereof during the
18 course of the proceeding.

19 (i) This section may not be interpreted to preclude,
20 for purposes of identification of a defendant, the presence of
21 both the victim or witness and the defendant in the courtroom
22 at the same time. The testimony shall be limited to purposes
23 of identification only.

24 (j) In circumstances where a defendant in a
25 proceeding has elected to proceed without counsel, the court
26 may appoint counsel for the defendant and may order counsel to
27 question the victim or witness on behalf of the pro se

1 defendant if the court finds that there is a substantial
2 likelihood that the victim or witness would experience
3 emotional harm if the defendant were allowed to question the
4 victim or witness.

5 Section 3. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 02-MAR-22

Read for the second time and placed
on the calendar..... 30-MAR-22

Read for the third time and passed
as amended..... 31-MAR-22

Yeas 101, Nays 0, Abstains 0

Jeff Woodard
Clerk