

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

SYNOPSIS: Under existing law, in the prosecution for any physical offense or sexual offense where the alleged victim is a child under 16 years of age, and in any prosecution involving the sexual exploitation of a child under 16 years of age, video depositions and closed circuit equipment may be used to obtain statements and witness testimony of the victim.

This bill would authorize the use of video equipment and closed circuit equipment to obtain video depositions and testimony by victims of human trafficking.

A BILL
TO BE ENTITLED
AN ACT

Relating to criminal procedure; to authorize the use of video depositions by certain victims and witnesses of human trafficking under certain conditions; and to authorize the

1 giving of testimony by closed circuit video equipment by
2 certain victims and witnesses of human trafficking under
3 certain conditions.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 (b) On any motion for a video deposition of the
13 victim or witness, the court shall consider the nature of the
14 offense, the nature of testimony that may be expected, and the
15 possible effect that the testimony in person at trial may have
16 on the victim or witness, along with any other relevant
17 matters that may be required by rule of the Supreme Court.

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

21 (1) The prosecuting attorney.

22 (2) The attorney for the defendant.

23 (3) A person whose presence, in the judgment of the
24 court, contributes to the well-being of the victim or witness
25 and who has dealt with the victim or witness in a therapeutic
26 setting regarding the abuse.

1 (4) Additional persons, other than the defendant, in
2 the discretion of the court.

3 (d) Examination and cross-examination of the victim
4 or witness shall proceed at the taking of the video deposition
5 as though the victim or witness were testifying personally in
6 the trial of the case. The state shall provide the attorney
7 for the defendant with a copy of the video deposition at a
8 suitable and reasonable time prior to the trial of the case.
9 The court shall enter a protective order prohibiting the
10 attorney for the defendant from copying, reproducing, or
11 distributing the video deposition. Objections to the
12 introduction into the record of the deposition shall be heard
13 by the judge in whose presence the deposition was taken, and
14 unless the court determines that its introduction in lieu of
15 the victim's or witness's actual appearance as a witness at
16 the trial will unfairly prejudice the defendant, the video
17 deposition shall be entered into the record by the state in
18 lieu of the direct testimony of the victim or witness and
19 shall be viewed and heard at the trial of the case.

20 (e) For the purposes of this section, "video
21 deposition" means the recording of video, with sound, of
22 witness testimony made under oath to be entered in the record
23 in a judicial proceeding.

24 (f) The Supreme Court may adopt rules of procedure
25 regarding the taking and use of video depositions in criminal
26 proceedings and juvenile cases, as well as transcription of
27 video depositions in appeals of those cases.

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

7 (h) All recordings of video depositions ordered
8 pursuant to this section shall be subject to any protective
9 order of the court for the purpose of protecting the privacy
10 of the victim or witness of the offense.

11 (i) When necessary, the operator of the equipment
12 used to record video depositions may also be in the room
13 during the taking of the deposition and the operator shall
14 make every effort to be unobtrusive.

15 (j) Only the court, the prosecuting attorney, and
16 the attorney for the defendant may question the victim or
17 witness. During the testimony of the victim or witness, the
18 defendant shall be provided access to view the testimony out
19 of the presence of the victim or witness and shall be allowed
20 to communicate with his or her attorney by any appropriate
21 election method.

22 (k) In circumstances where a defendant in a
23 proceeding has elected to proceed without counsel, the court
24 may appoint counsel for the defendant and may order counsel to
25 question the victim or witness on behalf of the pro se
26 defendant if the court finds that there is a substantial
27 likelihood that the victim or witness would experience

1 emotional harm if the defendant were allowed to question the
2 victim or witness.

3 Section 2. (a) In any criminal prosecution under
4 Article 8 of Chapter 6 of Title 13A, Code of ALabama 1975, the
5 court, on motion of the state or the defendant prior to the
6 trial of the case, may order that the testimony of any victim
7 of the crime or witness to the crime shall be viewed and heard
8 at trial by the court and the finder of fact by closed circuit
9 equipment. In ruling on the motion, the court shall take into
10 consideration the nature of the offense, the nature of
11 testimony that may be expected, and the possible effect that
12 the testimony in person at trial may have on the victim or
13 witness, along with any other relevant matters that may be
14 required by Supreme Court rule.

15 (b) If the court orders that the victim's or
16 witness's testimony in court shall be by closed circuit
17 equipment, the testimony shall be taken outside the courtroom
18 in the judge's chambers or in another suitable location
19 designated by the judge.

20 (c) Examination and cross-examination of the victim
21 or witness shall proceed as though the victim or witness was
22 testifying in the courtroom. The following individuals may be
23 present in the room with the victim or witness during his or
24 her testimony:

25 (1) The prosecuting attorney.

26 (2) The attorney of the defendant.

1 (3) A person whose presence, in the judgment of the
2 court, contributes to the well-being of the victim or witness
3 and who has dealt with the victim or witness in a therapeutic
4 setting regarding the abuse.

5 (4) In the discretion of the court, any additional
6 person, including the parent or legal guardian, except the
7 defendant.

8 (d) All costs incurred by the district attorney or
9 Attorney General to make it possible for the court and the
10 trier of the fact to view the testimony of the victim or
11 witness by closed circuit equipment as provided in this
12 section shall be paid by the state. The district attorney or
13 Attorney General shall submit all bills for costs to the state
14 Comptroller for approval and payment from the fund entitled
15 Court Costs Not Otherwise Provided For.

16 (e) The operators of the closed circuit equipment
17 may also be in the room and shall make every effort to be
18 unobtrusive.

19 (f) Only the court, the prosecuting attorney, and
20 the attorney for the defendant may question the victim or
21 witness. During the victim's or witness's testimony by closed
22 circuit equipment, the defendant, the judge, and the jury
23 shall remain in the courtroom. The video feed showing the
24 victim or witness shall remain visible to the defendant, the
25 judge, and the jury at all times during the testimony and
26 cross-examination of the victim or witness.

1 (g) The judge and the defendant shall be allowed to
2 communicate with the attorneys in the room where the victim or
3 witness is testifying by any appropriate electronic method.
4 The party making the motion that the testimony shall be by
5 closed circuit equipment shall make all necessary arrangements
6 regarding the equipment and the operation thereof during the
7 course of the proceeding.

8 (i) This section may not be interpreted to preclude,
9 for purposes of identification of a defendant, the presence of
10 both the victim or witness and the defendant in the courtroom
11 at the same time. The testimony shall be limited to purposes
12 of identification only.

13 (j) In circumstances where a defendant in a
14 proceeding has elected to proceed without counsel, the court
15 may appoint counsel for the defendant and may order counsel to
16 question the victim or witness on behalf of the pro se
17 defendant if the court finds that there is a substantial
18 likelihood that the victim or witness would experience
19 emotional harm if the defendant were allowed to question the
20 victim or witness.

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