

2022 South Dakota Legislature

House Bill 1099**AMENDMENT 1099A FOR THE INTRODUCED BILL**

1 **An Act to revise provisions related to courtroom modifications for child witnesses.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 26-8A-30 be AMENDED:**

4 **26-8A-30.** In any proceeding in which a child under the age of ~~twelve, or a child~~
5 ~~twelve years of age or older who is developmentally disabled as defined in § 27B-1-18,~~
6 eighteen is describing any act of sexual contact or rape performed with or on the child by
7 another, ~~or describing any act of physical abuse or neglect of the child by another, or any~~
8 act of physical abuse or neglect of another child, any act of human trafficking of the child
9 by another, or any act constituting a crime of violence as defined in § 22-1-2 committed
10 against the child or another child, the court or any party may move to allow that the
11 testimony of the child be taken in a room other than the courtroom and televised at the
12 same time to the courtroom by closed circuit television equipment. Prior to allowing the
13 child to testify under this section, the court shall hold a hearing outside the presence of
14 the jury and make a finding on the record that testimony by the child in the courtroom
15 will cause the child to suffer more than de minimis emotional distress and that testifying
16 under the provisions of this section is necessary to protect the welfare of the child.

17 ~~**Section 2. That § 26-8A-31 be AMENDED:**~~

18 ~~**26-8A-31.** At the taking of testimony pursuant to § 26-8A-30, the public shall be excluded~~
19 ~~from the room in which the witness~~child~~ is testifying. The court shall determine those persons~~
20 ~~permitted to be physically present shall be determined by the court. The court, in its~~
21 ~~discretion, may permit in the room a person whose presence would contribute to the~~
22 ~~well-being of the witness~~child~~ or the reduction of apprehension of the witness~~child~~ during the~~
23 ~~testimony. Attorneys for the parties may not be excluded.~~

1 ~~If the court makes a specific finding, outside the presence of the jury, that the presence of~~
2 ~~the defendant, or in a civil case, the presence of the respondent, in the same room as the~~
3 ~~witness~~child~~, will cause substantial emotional distress to the child and that such distress would~~
4 ~~impair the ability of the witness~~child~~ to communicate, upon such finding the court may exclude~~
5 ~~the defendant from the room in which the witness~~child~~ is testifying. However, if the defendant~~
6 ~~is excluded, the testimony of the witness~~child~~ shall be by two-way, closed-circuit television~~
7 ~~such that the testimony of the witness~~child~~ is televised in the courtroom and simultaneously~~
8 ~~thereto, a monitor in the room in which the witness~~child~~ is testifying displays a view of the~~
9 ~~courtroom which view shall include the defendant. The right to have the defendant's image~~
10 ~~televised in the room in which the witness~~child~~ is testifying is a right of the defendant which~~
11 ~~the defendant may waive. If the defendant is excluded from the room in which the~~
12 ~~witness~~child~~ is testifying, the court shall provide for instantaneous communication between~~
13 ~~the defendant and defense counsel and grant reasonable court recesses during the testimony~~
14 ~~for consultation between the defendant and defense counsel. The court may communicate by~~
15 ~~audio system with attorneys outside of the courtroom.~~

16 ~~If, on the motion of the prosecuting attorney and outside the presence of the jury, the court~~
17 ~~makes a specific finding that the child will suffer substantial emotional distress that will impair~~
18 ~~the ability of the child to communicate due to the presence of the jury or, although the child~~
19 ~~may be able to communicate in front of the jury, the child will suffer more than de minimis~~
20 ~~emotional distress due to the presence of the jury, the court may exclude the jury from the~~
21 ~~room in which the child is testifying. The testimony of the child must be televised at the same~~
22 ~~time to the courtroom by closed circuit television equipment.~~

23 **~~Section 3. That chapter 26-8A be amended with a NEW SECTION:~~**

24 ~~In any proceeding in which a child under the age of eighteen is describing any act of sexual~~
25 ~~contact or rape performed with or on the child by another, any act of physical abuse or neglect~~
26 ~~of the child by another, any act of physical abuse or neglect of another child, any act of human~~
27 ~~trafficking of the child by another, or any act constituting a crime of violence as defined in §~~
28 ~~22-1-2 committed against the child or another child, the court on its own motion or by motion~~
29 ~~of an attorney in the proceeding may provide any of the following accommodations to the~~
30 ~~child:~~

31 ~~(1) To be addressed, asked questions, and read the oath or affirmation to testify truthfully in~~
32 ~~an age appropriate manner;~~

- 1 ~~(2) To be free of nuisance or harassing tactics in the proceeding;~~
- 2 ~~(3) To have a person who would contribute to the well-being of the child present, clearly~~
3 ~~visible, and in close proximity, if the person is not a witness in the proceeding;~~
- 4 ~~(4) To have sufficient breaks in the proceedings to allow the comfort of the child;~~
- 5 ~~(5) To have a certified therapeutic dog as defined by § 23A-24-10, item used to provide~~
6 ~~psychological comfort, or both, present in the room with the child;~~
- 7 ~~(6) If the testimony is not taking place in a room other than the courtroom, to the use of a~~
8 ~~screen that would permit the judge, jury, and defendant to see the child but would obscure~~
9 ~~the child's view of the defendant, the public, or the jury; or~~
- 10 ~~(7) If the defendant has chosen to proceed pro se, to have the court appoint standby counsel~~
11 ~~for the defendant for the sole purpose of questioning the child on behalf of the defendant if~~
12 ~~the court finds that there is a substantial likelihood that emotional harm would come to the~~
13 ~~child if the defendant could question the child directly.~~