



## 2023 South Dakota Legislature

# Senate Bill 70

Introduced by: **Senator Reed**

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-31 be AMENDED:**

4 **26-8A-31.** At the taking of testimony pursuant to § 26-8A-30, the public ~~shall~~  
 5 must be excluded from the room in which the ~~witness-child~~ is testifying. The court shall  
 6 determine those persons permitted to be physically present ~~shall be determined by the~~  
 7 ~~court~~. The court, in its discretion, may permit in the room a person whose presence would  
 8 contribute to the well-being of the ~~witness-child~~ or the reduction of apprehension of the  
 9 ~~witness-child~~ during the testimony. Attorneys for the parties may not be excluded.

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

1           If, on the motion of the prosecuting attorney and outside the presence of the jury,  
2           the court makes a specific finding that the child will suffer substantial emotional distress  
3           that will impair the ability of the child to communicate due to the presence of the jury, the  
4           court may exclude the jury from the room in which the child is testifying. The testimony  
5           of the child must be televised at the same time to the courtroom by closed circuit television  
6           equipment.

7           **Section 2. That chapter 26-8A be amended with a NEW SECTION:**

8           In any proceeding in which a child under the age of sixteen is describing any act  
9           of sexual contact or rape performed with or on the child by another, any act of physical  
10          abuse or neglect of the child by another, any act of physical abuse or neglect of another  
11          child, any act of human trafficking of the child by another, or any act constituting a crime  
12          of violence as defined in § 22-1-2 committed against the child or another child, the court  
13          may, on its own motion or by motion of an attorney in the proceeding, provide any of the  
14          following accommodations to the child:

- 15          (1) To be addressed, asked questions, and read the oath or affirmation to testify  
16                truthfully in an age-appropriate manner;  
17          (2) To be free of nuisance or harassing tactics in the proceeding;  
18          (3) To have a person who would contribute to the well-being of the child present,  
19                clearly visible, and in close proximity, if the person is not a witness in the  
20                proceeding;  
21          (4) To have sufficient breaks in the proceedings to allow for the comfort of the child;  
22          (5) To have a certified therapeutic dog as defined in § 23A-24-10, an item used to  
23                provide psychological comfort, or both, present in the room with the child; or  
24          (6) If the defendant has chosen to proceed pro se, to have the court appoint standby  
25                counsel for the defendant for the sole purpose of questioning the child on behalf of  
26                the defendant if the court finds that there is a substantial likelihood that the child  
27                will suffer substantial emotional distress that will impair the ability of the child to  
28                communicate if the defendant questions the child directly.