



2022 South Dakota Legislature

House Bill 1099

Introduced by: **Representative 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-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
 19 excluded from the room in which the ~~witness~~child is testifying. The court shall determine
 20 those persons permitted to be physically present ~~shall be determined by the court~~. The
 21 court, in its discretion, may permit in the room a person whose presence would contribute
 22 to the well-being of the ~~witness~~child or the reduction of apprehension of the ~~witness~~child
 23 during the testimony. Attorneys for the parties may not be excluded.

24 If the court makes a specific finding, outside the presence of the jury, that the
 25 presence of the defendant, or in a civil case, the presence of the respondent, in the same

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

15 If, on the motion of the prosecuting attorney and outside the presence of the jury,
16 the court makes a specific finding that the child will suffer substantial emotional distress
17 that will impair the ability of the child to communicate due to the presence of the jury or,
18 although the child may be able to communicate in front of the jury, the child will suffer
19 more than de minimis emotional distress due to the presence of the jury, the court may
20 exclude the jury from the room in which the child is testifying. The testimony of the child
21 must be televised at the same time to the courtroom by closed circuit television
22 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
25 of sexual contact or rape performed with or on the child by another, any act of physical
26 abuse or neglect of the child by another, any act of physical abuse or neglect of another
27 child, any act of human trafficking of the child by another, or any act constituting a crime
28 of violence as defined in § 22-1-2 committed against the child or another child, the court
29 on its own motion or by motion of an attorney in the proceeding may provide any of the
30 following accommodations to the child:

- 31 (1) To be addressed, asked questions, and read the oath or affirmation to testify
32 truthfully in an age-appropriate manner;
33 (2) To be free of nuisance or harassing tactics in the proceeding;

- 1 (3) To have a person who would contribute to the well-being of the child present,
2 clearly visible, and in close proximity, if the person is not a witness in the
3 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
8 of a screen that would permit the judge, jury, and defendant to see the child but
9 would obscure 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
11 counsel for the defendant for the sole purpose of questioning the child on behalf of
12 the defendant if the court finds that there is a substantial likelihood that emotional
13 harm would come to the child if the defendant could question the child directly.