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SENATE
S. B. No. 1240

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Introduced by Senator Miriam Defensor Santiago

The Constitution, Article XV, Section 3(2), mandates the State to protect the right of every child to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.

The United Nations Convention on the Rights of the Child, Article 19, provides that

States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child

This bill seeks to shield any child testifying as a victim or witness to a sex crime from any further emotional and psychological stress by taking the testimony of the child without the physical presence of the accused but without depriving the accused of his right to confront and cross-examine the witness. The bill will help alleviate the trauma of the child's harrowing experience.

This bill is an innovation of the rules on presenting testimonial evidence. In sex crimes involving children, the perpetrators are usually close relatives or others with familiar access to the child. In many cases, the only witness is the victim. This bill will facilitate the effective testimony of the child and successful prosecution of child offenders.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

SENATE
S. B. No. 1240

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Introduced by Senator Miriam Defensor Santiago

AN ACT PROVIDING PROTECTION TO CHILDREN
WHO TESTIFY IN COURT

SECTION 1 Short Title - This shall be known as the "Child Testimony Act"

SECTION 2 Declaration of Policy - It is the policy of the State to provide special protection to every child from all forms of abuse, neglect, cruelty, exploitation, and discrimination, and other conditions prejudicial to their development.

Toward this end, the State shall protect every child who is a victim or witness of sex crimes. The State shall shield every child from the trauma of testifying face-to-face with the accused.

SECTION 3 Definitions - For purposes of this section -

(A) the term "adult attendant" means an adult described in Section 12 who accompanies a child throughout the judicial process for the purpose of providing emotional support;

(B) the term "child" means a person who is under the age of 18 or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, discrimination because of physical, emotional or mental disability or condition, or persons alleged to be

(1) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

(2) a witness to a sex crime committed against another person,

(C) the term "child abuse" means the physical, emotional or mental injury, sexual abuse or discrimination or negligent treatment of a child,

(D) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm,

(E) the term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

(F) the term "exploitation" means the act of any person who causes a child, for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, to indulge in sexual intercourse or lascivious conduct;

(G) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of "sexual exploitation" of children, or incest with children,

(H) the term "sexually explicit conduct" means actual or simulated -

(1) sexual intercourse, including sexual contact in the manner of genital-genital, genital-anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, harass, degrade, or arouse or gratify sexual desire of any person,

(2) bestiality

(3) masturbation,

(4) lascivious exhibition of the genitals or pubic area of a person or animal; or

(5) sadistic or masochistic abuse,

(I) the term "sex crime" means an act of sexual abuse that is a criminal act,

(J) the term "negligent treatment" means the failure to provide, for reasons other than neglect, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of a child and

(K) the term "child abuse" does not include discipline administered by a parent or legal guardian to his or her child provided that it is reasonable in manner and moderate in degree and such use does not constitute cruelty

SECTION 4 Alternatives to live in-court testimony - The court shall allow the following alternative testimony when any of the grounds provided in Section 5 is present.

- (A) Child's live testimony by two-way closed circuit television
- (B) Videotaped deposition of child

SECTION 5 Grounds for allowing alternatives to live in-court testimony - The court may order that the testimony of the child be taken by two-way closed-circuit television or videotaped deposition if the court finds that the child is unable to testify in open court in the presence of the accused, for any of the following reasons.

- (A) The child is unable to testify because of fear or shyness
- (B) There is substantial likelihood, established by expert testimony, that the child will suffer emotional or mental strain if required to testify at trial.
- (C) The child suffers a mental or other infirmity.
- (D) Conduct by the accused or defense counsel causes the child to be unable to commence testifying

The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors is substantial as to justify an order, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time in the presence of the child attendant, the public prosecutor, the private prosecutor, the guardian ad litem, and the defense counsel present but not including an attorney pro se.

SECTION 6 Procedure for two-way closed circuit television -

- (A) In a proceeding involving an alleged offense against a child, the public prosecutor, the child's attorney, or a guardian ad litem appointed under Section 11 may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised

closed circuit television. The person seeking such an order shall apply for such an order at least (5) days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(B) If the court orders the taking of testimony by television, the public prosecutor and the attorney for the accused not including an attorney pro se for a party shall be present in a separate courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the testimony are -

- (1) the private prosecutor or guardian ad litem appointed under Section 11;
- (2) Persons necessary to operate the closed-circuit television equipment;
- (3) A judicial officer appointed by the court; and
- (4) Other persons whose presence is determined by the court to be necessary to

protect the life and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the accused, judge and the public. The accused shall be provided with the means of private, contemporaneous communication with the accused's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the voice of the judge.

SECTION 7. Videotaped deposition of child -

(A) In a proceeding involving an offense against a child, the public prosecutor, private prosecutor, the child's parent or legal guardian, or the guardian ad litem appointed under Section 11 may apply for an order that a deposition be taken of the child's testimony and the deposition be recorded and preserved on videotape.

(B) The trial judge shall preside at the videotape deposition of a child and shall rule on the deposition as if at trial. The only other persons who may be permitted to be present at the deposition are -

- (1) the public prosecutor,
- (2) the attorney for the accused,

(3) the private prosecutor or guardian ad litem appointed under Section 11;

(4) persons necessary to operate the videotape equipment;

(5) subject to clause (C), the accused; and

(6) other persons whose presence is determined by the court to be necessary to the care and well-being of the child

The accused shall be afforded the rights applicable to the accused during trial, including the right to an attorney, the right to confront the witness, and the right to cross-examine the

(C) If the preliminary finding of inability under Section 4 is based on evidence that the child is unable to testify in the physical presence of the accused, the court may order that the accused, including an accused represented pro se, be excluded from the room in which the examination is conducted. If the court orders that the accused be excluded from the examination room, the court shall order that two-way closed circuit television equipment relay the accused's image into the room in which the child is testifying, and the child's testimony into the examination room where the accused is viewing the proceeding, and that the accused be provided with a means for real-time, contemporaneous communication with the accused's attorney during the examination.

(D) Handling of videotape - The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the public prosecutor, the accused, and the accused's attorney during ordinary business hours.

(E) If at the time of the trial the court finds that the child is unable to testify for a reason described in Section 5 (3), the court may admit into evidence the child's videotaped testimony in lieu of the child's testifying at the trial. The court shall support a ruling under this section with findings on the record.

(F) Upon timely receipt of notice that new evidence has been discovered after the trial has begun and before, or during, trial, the court, for good cause shown, may order an

videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(G) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(H) The videotape of a deposition taken under this paragraph shall be destroyed five (5) years after the date on which the trial court rendered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

SECTION 8 Privacy protection -

(A) Confidentiality of information -

(1) A person acting in a capacity described in subparagraph (2) in connection with a criminal proceeding shall -

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(2) Subparagraph (A) applies to-

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person employed by the Government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the accused and employees of the accused, including the attorney for the accused and persons hired by the accused or the attorney for the accused to provide assistance in the proceeding.

(B) Filing under seal - All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court -

(1) the complete paper to be kept under seal; and

(2) the paper with the portions of it that disclose the name of or other information concerning a child redacted to be placed in the public record.

SECTION 9 Protective orders -

(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may -

(1) provide that the testimony of a child witness, and the testimony of any other witness when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom and

(2) provide for any other measures that may be necessary to protect the privacy of the child.

SECTION 10 Disclosure of information - This subsection does not prohibit disclosure of the name of or other information concerning a child to the accused, the attorney for the accused, a guardian ad litem or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

SECTION 11 Appointment of guardian ad litem -

(A) In general - The court may appoint a guardian ad litem for a child who was a victim or a witness to a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background

and familiarity with the judicial process, social service programs, and child abuse issues. The guardian ad litem may be a social worker from the Department of Social Welfare and Services and shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(B) Duties of guardian ad litem - A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

(C) Immunities - A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties as described in subpart (B).

SECTION 12 Adult attendant - A child testifying at or attending a judicial proceeding shall have the right to choose and be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or otherwise being used, shall be recorded on videotape.

SECTION 13 Speedy trial - In a proceeding in which a child is called to give testimony, at the request of the public prosecutor or a guardian ad litem, or on its own motion, the court may designate the proceeding as being of special public importance. In cases so designated, the court shall,

and start with these rules. expedite the proceeding, conduct continuous trials and ensure that it takes precedence over any other case. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of the fact and conclusion of law when granting a continuance in cases involving a child.

SECTION 14. Testimonial aids - The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

SECTION 15. Effect on The Rules of Court - Nothing in this Act shall be construed to abrogate any rule of the Rules of Court.

SECTION 16. Separability Clause - If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain in full force and effect and subsisting.

SECTION 17. Repealing Clause - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

SECTION 18. Effectivity Clause - This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation.

Approved

MIRIAM DEFENSOR SANTIAGO