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SENATE

S. No. 348

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Introduced by Senator Antonio "Sonny" F. Trillanes IV

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**EXPLANATORY NOTE**

Republic Act No. 6981 provides for a program that shall primarily protect individuals who has witnessed or has knowledge on a particular commission of a crime. However, this law failed to highlight provisions pertaining to child witnesses.

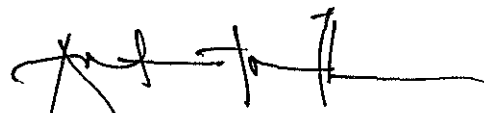
The Commission on Human Rights has been calling for a measure that can deal with the needs of child witnesses, saying that it is horrible enough for a child to witness a criminal act, and having a child testify in courts will just be a another dreadful part of the scenario<sup>1</sup>.

Aiming to cope with the said predicament, this bill sets out the manner in which the evidence of a child witness may be given and provides for a screen or other arrangement to be put up to prevent a child witness who is giving evidence in Court from seeing the accused or a child charged with any offence.

Moreover, the proposed measure also provides for the examination of a child witness through an intermediary such as an interpreter or any other person authorized by the Court. It also provides for the functions of the intermediary who shall not influence the answer of the child witness or disrupt the questioning of the child witness.

Further, this bill seeks to restrict the media from reporting and publishing the particulars of a child witness in a proceeding which may lead to the identification of the child witness. More importantly, a child witness who is suffering from a disability shall also be covered by this bill.

In view of the foregoing, the immediate approval of this bill is earnestly sought.



ANTONIO "SONNY" F. TRILLANES IV  
Senator

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<sup>1</sup> CHR calls for Child Witness Protection. Data retrieved at <http://newsinfo.inquirer.net/breakingnews/nation/view/20090120-184528/> on 18 February 2009

FIFTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )

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S: No. 348

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AN ACT  
PROVIDING FOR THE PROCEDURE RELATING TO THE GIVING OF EVIDENCE  
BY CHILD WITNESSES, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

ARTICLE I

PRELIMINARY

SECTION 1. *Title.* – This Act shall be known as the “*Evidence of Child Witness Act.*”

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy to ensure the welfare and protection of all child witnesses from conditions prejudicial to their development.

SEC. 3. *Definition of Terms.* – For purposes of this Act, the followings terms shall mean:

- a) “medical officer” means a registered medical practitioner in the public service and includes a registered medical practitioner in any teaching hospital of a university;
- b) “police officer” means a member of the Philippine National Police;
- c) “video recording”, in relation to a child witness, means a video recording of the oral evidence of the child witness, in the form of an interview conducted between a police officer and the child witness, expressed upon any format, made with a view to its admission as evidence of examination-in-chief of the child witness;

1 officer and the child witness, expressed upon any format, made with a view to its  
2 admission as evidence of examination-in-chief of the child witness;

3 d) “live link” means a live television link or other arrangement whereby a child witness,  
4 while being absent from the courtroom or other place where the proceedings are  
5 being held, is able to see and hear a person in such courtroom or other place and to be  
6 seen and heard by the persons specified in Section 5(b)(i) to (iv);

7 e) “child witness” means a person under the age of sixteen years who is called or  
8 proposed to be called to give evidence in any proceedings but does not include an  
9 accused or a child charged with any offense.

10  
11 **ARTICLE II**

12 **MANNER OF GIVING EVIDENCE BY CHILD WITNESS**

13 **SEC. 4. *How Evidence of Child Witness May Be Given.* –**

14 a) A child witness may, at any stage of a trial, give evidence in any one or a combination of  
15 the following manner:

16 i) by having a screen between him and the accused or a child charged with any  
17 offense;

18 ii) by live link; or

19 iii) by video recording.

20 b) For the purpose of this section, any evidence given under subsection (a) shall be deemed  
21 to be evidence given in an open Court.

22  
23 **SEC. 5. *Screening.* –**

24 a) A child witness, while giving evidence in the Court, may be prevented by means of a  
25 screen or other arrangement from seeing and being seen by the accused or a child charged  
26 with any offense.

- 1 b) The screen or other arrangement shall not prevent the child witness from being able to  
2 see, and to be seen by:
- 3 i) the Court;
  - 4 ii) the prosecutor;
  - 5 iii) the advocate for the accused or the child charged with any offense; and
  - 6 iv) the interpreter.
- 7 c) Where two or more advocates are acting for the accused or the child charged with any  
8 offense, the requirement of subsection (b)(iii) is satisfied if the child witness is able at all  
9 material times to see and be seen by at least one of them.

10  
11 **SEC. 6. Evidence by Live Link. –**

- 12 a) Where a child witness gives evidence by means of a live link from a location other than  
13 the courtroom, that location is deemed to be part of the courtroom in which the  
14 proceeding is being held for the purposes of this section.
- 15 b) The Court may make an order specifying:
- 16 i) that a member of the Court staff be present at that location;
  - 17 ii) the interpreter for the proceedings;
  - 18 iii) any adult permitted by the Court to accompany the child witness;
  - 19 iv) the persons in the courtroom who must not be heard, or seen and heard, by the  
20 child witness and by the persons accompanying the child witness;
  - 21 v) the persons in the courtroom who must be able to see and hear the child witness  
22 and the persons accompanying the child witness;
  - 23 vi) the method of operation of the live link system including compliance with such  
24 minimum technical standards as may be determined by the Chief Justice of the  
25 Supreme Court; and
  - 26 vii) any other matter as the Court considers necessary in the interest of justice.
- 27

1           **SEC. 7. Video Recording of a Child Witness. –**

- 2           a) Where a video recording of a child witness is given in evidence, such video recording  
3           shall be admitted as evidence of examination-in-chief of the child witness: *Provided,*  
4           That, the contents of the video recording shall be subject to the Rules of Evidence.
- 5           b) A video recording under subsection (a) shall not be admitted unless:
- 6           i)       accompanied by a transcript of the original language used in the video recording;  
7           and  
8           ii)      accompanied by a translation of the transcript, if the language used in the video  
9           recording is other than the national language.
- 10          c) A certificate by a person who did the video recording pursuant to subsection (a) shall,  
11          until the contrary is proven, be admitted as a *prima facie* evidence of the authenticity of  
12          the content of the video recording.
- 13          d) Where a video recording is admitted under this section, the child witness shall be called  
14          to be further examined-in-chief by the party who tendered the video recording in  
15          evidence on any matter which, in the opinion of such party, has not been dealt with  
16          adequately in the child witnesses recorded testimony.
- 17          e) Notwithstanding any provision of this Act, where a child witness is called to be further  
18          examined-in-chief under subsection (d), he may give evidence by means of having a  
19          screen between him and the accused or child charged with any offence or by means of a  
20          live link.
- 21          f) Where a video recording is given in evidence under this section, any statement made by  
22          the child witness which is disclosed in the recording shall be treated as if given by that  
23          child witness in direct oral evidence.
- 24          g) In the case of a child witness who has been sworn, the Court shall admit the statement  
25          made by the child witness in the video recording as sworn evidence.
- 26          h) In the case of evidence of a child witness of tender years, the Court, when considering the  
27          statement in the video recording as evidence shall assess and form an opinion as to

1 whether the child witness possesses sufficient intelligence and understands the duty of  
2 speaking the truth, though not given upon oath.

3  
4 **SEC. 8. *Previous Video Recording of a Child Witness may be Proved.*** – When a child  
5 witness attains the age of sixteen years before giving evidence in the Court, any previous video  
6 recording of evidence given by the child witness, made pursuant to Section 7 of this Act, may be  
7 proved.

8  
9 **SEC. 9. *Examination of Child Witness through Intermediary.*** –

10 a) Any examination of a child witness may be conducted through the Court or an interpreter  
11 or any other person authorized by the Court, acting as an intermediary, for the purposes  
12 of this section.

13 b) The function of an intermediary is to communicate:

14 i) to the child witness, questions put to the child witness; and

15 ii) to any person asking such questions, the answers given by the child witness in  
16 reply to them, and to explain such questions or answers so far as necessary to  
17 enable them to be understood by the child witness.

18 c) An intermediary shall not:

19 i) prompt the child witness to answer any question;

20 ii) influence the answers of the child witness; or

21 iii) disrupt the questioning of the child witness.

22 d) An unrepresented accused shall not be entitled to question a child witness directly but  
23 may do so through an intermediary.

24  
25 **SEC. 10. *Adults Accompanying Child Witness.*** –

26 a) The Court may allow a child witness to be accompanied by an adult while giving  
27 evidence in any proceedings.

1 b) The Court may permit more than one adult to accompany the child witness if the Court  
2 considers it in the interests of justice to do so.

3 c) An adult accompanying the child witness shall not:

4 i) prompt the child witness to answer any question;

5 ii) influence the answers of the child witness; or

6 iii) disrupt the questioning of the child witness.

7

8 **SEC. 11. *Formal Attire May be Dispensed With.*** – The Court may direct that the  
9 wearing of coats, jackets, gowns or other formal attire of a judge and Court officers to be  
10 dispensed with during the giving of evidence by a child witness.

11

12 **SEC. 12. *Presumption as to Age of Child Witness.*** –

13 a) If the Court is in doubt as to the exact age of a child witness, a certificate of a medical  
14 officer to the effect that, in his opinion, the child witness has or has not attained a  
15 specified age may be given in evidence, and the Court shall declare the age of that child  
16 witness for the purposes of this Act.

17 b) The age of a child witness as declared by the Court under subsection (a) shall be deemed  
18 to be the true age of that child witness, unless and until the contrary is proved.

19

20 **SEC. 13. *Child Witness Suffering from a Disability.*** –

21 a) A child witness who is suffering from any disability may, apart from giving his evidence  
22 in any manner prescribed in Section 4(a) of this Act or a combination of the manner as  
23 prescribed in its subsections, give his evidence in any other manner in which he can make  
24 it intelligible.

25 b) The evidence so given shall be deemed to be oral evidence.

1 c) In this section, "disability" includes activity limitation resulting from physical,  
2 intellectual or sensory impairment, medical conditions or mental illness which may be  
3 permanent or temporary in nature.  
4

5 **SEC. 14. *Child Witness Attaining Age of Sixteen Years while Giving Evidence During***  
6 ***Trial.*** – When a child witness is giving evidence before the Court and in the course of giving  
7 evidence he or she attains the age of sixteen years, the Court shall continue to hear the evidence  
8 of that child witness and exercise all the powers under this Act.  
9

10 **SEC. 15. *Restrictions on Media Reporting and Publication.*** –

11 a) No person shall reveal or publish any particulars in any mass media or transmit through  
12 any electronic medium that may lead to the identification of a child witness, in particular  
13 the name and address of the child witness, and the name and other particulars of the  
14 educational institution he attends.

15 b) A picture of the child witness or any other person, place or thing which may lead to the  
16 identification of the child witness in the proceedings mentioned in subsection (a) shall not  
17 be published in any mass media or transmit through any electronic medium.

18 c) Any person who contravenes subsection (a) or (b) commits an offense and shall on  
19 conviction be liable to a fine not exceeding Twenty Thousand Pesos (P20,000.00) or to  
20 imprisonment for a term not exceeding five (5) years or to both.  
21

22 **SEC. 16. *Regulations.*** – Regulations that are necessary or expedient to give full effect to  
23 or for carrying out the provisions of this Act shall be made:

24 a) to prescribe the procedures to be used for any of the purposes of this Act; and

25 b) to provide for the management and administration of facilities to be given to child  
26 witnesses.



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**ARTILCE III**

**GENERAL PROVISIONS**

**SEC. 17. *Separability Clause.*** – If any provision of this Act shall at any time be found to be unconstitutional or invalid, the remainder thereof not affected by such declaration shall remain in full force and effect.

**SEC. 18 . *Repealing Clause.*** – All laws, decrees, rules or regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

**SEC. 19. *Effectivity Clause.*** – This Act shall take effect after fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

Approved,