2023 South Dakota Legislature

Senate Bill 70

SENATE JUDICIARY ENGROSSED

Introduced by: ***Senator*** *Reed*

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

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

Section 1. That § 26-8A-31 be AMENDED:

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

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

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

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

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

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

(2) To be free of nuisance or harassing tactics in the proceeding;

(3) To have a person who would contribute to the well-being of the child present, clearly visible, and in close proximity, if the person is not a witness in the proceeding;

(4) To have sufficient breaks in the proceedings to allow for the comfort of the child; or

(5) To have a certified therapeutic dog as defined in § 23A-24-10, an item used to provide psychological comfort, or both, present in the room with the child.