

# ACT NO. 8923

BILL NO. 35-0031

## THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2024

An Act amending title 5 Virgin Islands Code, subtitle 3, part I, by adding a new chapter 301A, creating the Child Victims' and Child Witnesses' Rights Act and repealing title 5 Virgin Islands Code, chapter 301, subtitle 3, section 3510

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*Be it enacted by the Legislature of the Virgin Islands:*

**SECTION 1.** Title 5 Virgin Islands Code, subtitle 3, part I is amended by adding a chapter 301A to read as follows:

**“Chapter 301A. The Child Victims’ and Child Witnesses’ Rights Act**

§ 3511. This chapter shall be known and may be cited as the “Child Victims’ and Child Witnesses’ Rights Act”.

**§ 3512. Definitions**

As used in this chapter, unless the context clearly requires otherwise:

(a) “Adult attendant” means an adult who accompanies a child throughout the judicial process for the purpose of providing emotional support who may be an advocate, counselor, therapist, the non-offending parent, or someone with whom the child is familiar who can support the child throughout the entire process and afterwards.

(b) “Child” means a person who is under the age of 18 years.

(c) “Child abuse” means the infliction of physical, mental, or emotional injury upon a child, or maltreatment, sexual conduct or sexual contact with a child, or exploitation of a child by any person. It does not include discipline administered by a parent or legal guardian to his or her child provided that the discipline is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(d) "Exploitation" means the use of a child for pornography, prostitution, labor trafficking, or any act where a child is coerced or manipulated for sexual or financial gain.

(e) "Mental injury" means psychological injury or harm including emotional trauma, which impairs the mental or emotional health or functioning of a child.

(f) "Multidisciplinary Team" means a team of professionals, including representatives from law enforcement, child protective services, health and mental health services, victim advocacy, and the legal system, who work together to investigate, prosecute, and provide services for cases of severe child maltreatment, including abuse and neglect.

(g) "Neglect" means to place a child or allow a child to be placed in a situation which a reasonable person should know is dangerous to the child's health or welfare, and includes, but is not limited to, the following:

(1) leaving a child unsupervised, taking into account the age and developmental stage of the child;

(2) denying or failing to provide a child with shelter, food, clothing, medical care or education;

(3) leaving a child in the care of any person known to use, possess or sell illegal drugs or abuse alcohol;

(4) leaving a child in the care of any person known to have engaged in sexual activity with any child;

(5) leaving a child in the care of any person known to be incapable of providing adequate care for a child;

(6) keeping a child under the age of 16 years home from school to care for other children; or

(7) leaving a child in the care of a person that is known to be a registered sex offender of children.

(h) "Physical injury" means the impairment of physical condition and includes, but is not limited to, any skin bruising, bleeding, failure to thrive, malnutrition, burn, bone fracture, soft tissue swelling, subdural hematoma, injury to any internal organ, or any physical condition that threatens a child's health or welfare, or death as a result of physical injury

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

(j) “sexual conduct” means actual or simulated:

(1) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex;

(2) bestiality;

(3) masturbation;

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

(5) sadistic or masochistic abuse.

(k) “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, humiliate, harass, degrade, arouse or gratify the sexual desire of any person.

### **§ 3513. Alternatives to Live In-Court Testimony**

(a) Child’s live testimony by two-way closed-circuit television:

(1) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child’s attorney, or a guardian ad litem, appointed under section 3519, may move the court for an order that the child’s testimony be taken in a room outside the courtroom and be televised by two-way closed circuit television. The party seeking such an order shall file an appropriate motion not less than seven days before the trial date. If a party moves the court for an order outside the seven days, the court may still issue an order if it finds that the need for the order was not reasonably foreseeable and good cause exists for the order to be entered.

(2) The court may order that the testimony of the child be taken by closed-circuit television as provided in paragraph (1) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

(A) the child is unable to testify because of fear;

(B) there is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying;

(C) the child suffers a mental or other infirmity; or

(D) conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(3) The court shall support a ruling on the child's inability to testify with detailed findings on the record that justify the use of the alternative method for a child's testimony and that the alternative method is necessary to protect the child and is narrowly tailored to meet that purpose. In determining whether the impact on an individual child of one or more of the factors described in paragraph (2) is so substantial as to justify an order under paragraph (1), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

(4) If the court orders that testimony be taken by closed-circuit television, the attorney for the Government and the defendant's attorney, not including a party acting as an attorney, pro se, shall be present in the room outside the 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 child's testimony are:

- (A) the child's attorney or guardian ad litem appointed under section 3519;
- (B) persons necessary to operate the closed-circuit television equipment;
- (C) a judicial officer, appointed by the court; and
- (D) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

(5) The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed-circuit television transmission shall transmit the defendant's image and the voice of the judge into the room in which the child is testifying.

(b) Videotaped deposition of child

(1) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under section 3519 may make a motion to the court for an order that the child's deposition testimony be taken outside of the defendant's presence and be recorded and preserved on videotape.

(2) Upon timely receipt of a motion described in paragraph (1), the court shall make a preliminary finding regarding whether at the time of trial the child will be likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

(A) the child will be unable to testify because of fear;

(B) there is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court;

(C) the child suffers a mental or other infirmity; or

(D) conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(3) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in paragraph (2), the court shall order that the child's deposition be taken and preserved by videotape.

(4) The trial judge shall preside at the videotaped deposition of the child and shall rule on all objections and motions as if at trial. The only other persons who may be permitted to be present at the proceeding are:

(A) the attorney for the Government; and

(B) the defendant's attorney;

(5) A defendant's rights under the Sixth Amendment, including the right to cross-examine witnesses, must be preserved in all cases where alternative testimony is used. The alternative method must provide the defendant an opportunity to observe and participate in the examination of the witness to the fullest extent possible.

(6) The defendant must be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to confront the witness against the defendant, and the right to cross-examine the child.

(7) If the preliminary finding of inability under paragraph (2) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that two-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(8) The complete record of the examination of the child, including the image and voices of all persons who in any way participated in the examination, must be made and preserved on video tape in addition to a stenographical recording. The videotape must be transmitted to the clerk of the court in which the action is pending and must be made

available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(9) The child's attorney or guardian ad litem appointed under section 3519;

(10) Persons necessary to operate the videotape equipment;

(11) Subject to paragraph (2)(D), the defendant; and

(12) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

(c) If at the time of trial, the court finds that the child is unable to testify as for a reason described in paragraph (2), the court may admit into evidence the child's videotaped deposition in lieu of the child testifying at the trial. The court shall support a ruling under this subsection with findings on the record.

(d) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child must be restricted to the matters specified by the court as the basis for granting the order.

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

(f) The videotape of a deposition taken pursuant to this section must be destroyed five years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal, including Supreme Court review. The videotape must become part of the court record and be kept by the court until it is destroyed.

#### **§ 3514. Competency Examinations**

(a) Nothing in this section may be construed to abrogate Rule 601 of the Virgin Islands Rules of Evidence.

(b) A child is presumed to be competent.

(c) A competency examination of a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

(d) A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason to conduct a competency examination.

(e) The only persons who may be permitted to be present at a competency examination are:

- (1) the judge;
- (2) the attorney for the Government;
- (3) the defendant's attorney;
- (4) a court reporter; and

(5) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

(f) A competency examination regarding a child witness must be conducted out of the sight and hearing of a jury.

(g) The court must conduct the competency examination on the basis of questions submitted by the attorney for the Government, the defendant's attorney, including a party acting as an attorney pro se. The court may permit an attorney, but not a party acting as an attorney pro se, to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(h) The questions asked at the competency examination of a child must be appropriate to the age and developmental level of the child, must not be related to the issues at trial, and must focus on determining the child's ability to understand and answer simple questions.

(i) Psychological and psychiatric examinations to assess the competency of a child witness may not be ordered without a showing of compelling need.

### **§ 3515. Privacy Protection**

(a) A person acting in a capacity described in subsection (b) of this section, in connection with a criminal proceeding shall:

(1) 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

(2) disclose documents described in subsection (c) of this section, 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.

(b) Subsection (a) of this section applies to:

(1) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement involved in the case, and anyone hired by the Government to provide assistance in the proceeding;

(2) employees of the court;

(3) the defendant and employees of the defendant, including the defendant's attorney and persons hired by the defendant or the defendant's attorney to provide assistance in the proceeding; and

(4) members of the jury.

(c) All papers to be filed in court that disclose the child's name, or any other information concerning a child, must 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 child's name, or other information concerning the child, redacted to be placed in the public record.

(d) On motion by any person, the court may issue an order protecting the child from public disclosure of the child's 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.

(e) A protective order issued under subsection (d) of this section 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 child's name, 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.

(f) This section does not prohibit disclosure of the child's name, or other information concerning the child to the defendant, the defendant's attorney, a multidisciplinary team, 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.

### **§ 3516. Closing the Courtroom**

When a child testifies, the court may order all persons excluded from the courtroom except for the adult attendant, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines that requiring the child to testify in open court would cause substantial psychological harm to the child, or would result in the child's inability to communicate effectively. The order must be narrowly tailored to serve the Government's specific compelling interest.



**§ 3517. Victim Impact Statement**

In preparing the presentence report pursuant to Rule 32(c) of the Virgin Islands Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. The guardian ad litem, appointed under section 3519 shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. The guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

**§ 3518. Use of Multidisciplinary Teams**

(a) The court shall use a multidisciplinary team when it is feasible to do so. The court shall work with the Government and its established multidisciplinary teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary team as appropriate.

(b) The role of the multidisciplinary team is to provide specific services for the child including:

(1) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

(2) telephone consultation services in emergencies and in other situations;

(3) medical evaluations related to abuse or neglect;

(4) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child-victim or child-witness case;

(5) expert medical, psychological, and related professional testimony;

(6) case service coordination and assistance, including the location of services available from public and private agencies in the community; and

(7) training services for judges, litigators, court officers and others that are involved in child-victim and child-witness cases, regarding the appropriate handling of child victims and child witnesses.

**§ 3519. Guardian Ad Litem**

(a) In order to protect the best interests of the child, the court shall appoint, and provide reasonable compensation and payment for expenses for a guardian ad litem for a child who was a victim of a crime involving abuse or exploitation. The court also may use its discretion to appoint and provide reasonable compensation and payment for expenses for a guardian ad litem for a child who was a witness to a crime involving abuse or exploitation. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem may not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(b) A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which the 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. The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives. A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem may 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) A guardian ad litem is presumed to be acting in good faith and is immune from civil and criminal liability for complying with the guardian's lawful duties described in subsection (b) of this section.

#### **§ 3520. Adult Attendant**

(a) A child testifying at or attending a judicial proceeding has the right to be accompanied by an adult attendant to provide emotional support to the child. The court 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. An adult attendant may not provide the child with an answer to any question directed to the child during the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, must be recorded on videotape.

(b) Upon court approval, the child may be accompanied by an emotional support animal during the proceedings. The inclusion of a support animal as part of the child's support system must adhere to the Court's established guidelines to maintain decorum.

(c) The Court shall take into consideration the specific needs and preferences of the child to ensure the child's comfort. The Court shall also ascertain the effectiveness of the support provided by the adult attendant or support animal.

(d) To document the child's statements and disposition, the child's testimony or deposition must be videotaped.

**§ 3520a. Speedy Trial**

In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. 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 fact and conclusions of law when granting a continuance in cases involving a child.

**§ 3520b. Stay of Civil Action**

If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, and a criminal action is pending that arises out of the same occurrence and in which the child is the victim, the civil action must be stayed until the end of all phases of the criminal action, and any mention of the civil action during the criminal proceeding is prohibited. For purposes of this section, a criminal action is pending until its final adjudication in the trial court.

**§ 3520c. 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.

**§ 3520d. Prohibition on Reproduction of Child Pornography**

(a) In any criminal proceeding, any property or material that constitutes child pornography, as defined by title 18, section 2256 of the United States Code, must remain in the care, custody, and control of either the Government or the court.

(b) Notwithstanding Rule 16 of the Virgin Islands Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography, as defined by title 18, section 2256 of the United States Code, so long as the Government makes the property or material reasonably available to the defendant.

(c) For the purposes of subsection (b), property or material is deemed to be reasonably available to the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility."

**SECTION 2.** Title 5 Virgin Islands Code, chapter 301, subtitle 3, section 3510 is repealed.

Thus passed by the Legislature of the Virgin Islands on October 16, 2024.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 22<sup>nd</sup> day of October, A.D., 2024.



*Novelle E. Francis, Jr.*

Novelle E. Francis, Jr.  
President

*Carla J. Joseph*

Carla J. Joseph  
Secretary



**Bill No. 35-0031 is hereby approved.**

**Witness my hand and the Seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, This 31 day of October, 2024 A.D.**

*Kevin McCurdy*

Kevin McCurdy  
Acting Governor