

1                               **COMMITTEE SUBSTITUTE**

2   **FOR**

3   **Senate Bill No. 461**

4        (By Senators Cookman, Beach, Fitzsimmons, D. Hall, Jenkins,  
5        Laird, Williams, Unger, Kessler (Mr. President), Stollings,  
6            Chafin, Miller, Snyder, Plymale and Palumbo)

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8            [Originating in the Committee on the Judiciary;  
9                        reported March 20, 2013.]

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13 A BILL to amend the Code of West Virginia, 1931, as amended, by  
14        adding thereto four new sections, designated §48-1-401,  
15        §48-1-402, §48-1-403 and §48-1-404; to amend said code by  
16        adding thereto a new article, designated §49-1A-1, §49-1A-2,  
17        §49-1A-3 and §49-1A-4; and to amend and reenact §62-6B-2, §62-  
18        6B-3 and §62-6B-4 of said code, all relating to child  
19        witnesses; creating procedures and protections for child  
20        witnesses in domestic relations and child abuse and neglect  
21        proceedings; amending procedures and protections for child  
22        witnesses in criminal proceedings; setting forth the rights of  
23        child witnesses; establishing the procedure and safeguards to  
24        be used when taking testimony of a child witness; setting  
25        criteria that a court should use when addressing child  
26        witnesses; permitting a court in certain instances to permit  
27        a child witness to give testimony by closed-circuit  
28        television; establishing certain procedures to be used when

1 taking testimony of a child witness by closed-circuit  
2 television; protecting recordings made of statements by child  
3 witnesses; providing for confidentiality; providing for  
4 criteria for instances when the child witness may also be a  
5 victim; permitting a support person and other accommodations  
6 for a child witness in certain situations; defining terms;  
7 increasing the age of a child witness in criminal cases;  
8 adjusting findings that must be made with regard to certain  
9 child witnesses; updating procedures for taking testimony of  
10 child witnesses by closed-circuit television in criminal  
11 cases; removing the option from criminal defendants to absent  
12 themselves from the courtroom during child witness testimony  
13 in lieu of testimony by closed-circuit television; providing  
14 additional accommodations available to a court for child  
15 witnesses in criminal cases; and setting requirements for use  
16 of recordings of child witnesses.

17 *Be it enacted by the Legislature of West Virginia:*

18 That the Code of West Virginia, 1931, as amended, be amended  
19 by adding thereto four new sections, designated §48-1-401,  
20 §48-1-402, §48-1-403 and §48-1-404; that said code be amended by  
21 adding thereto a new article, designated §49-1A-1, §49-1A-2, §49-  
22 1A-3 and §49-1A-4; and that §62-6B-2, §62-6B-3 and §62-6B-4 of said  
23 code be amended and reenacted, all to read as follows:

24 **CHAPTER 48. DOMESTIC RELATIONS.**

25 **ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

26 **PART IV. CHILD WITNESSES**

27 **§48-1-401. Additional definition with regard to child witnesses.**

28 For the purposes of this article, regarding child witnesses,

1 "child" means any person who is under the age of eighteen years of  
2 age.

3 **§48-1-402. Rights of child witnesses in proceedings held pursuant**  
4 **to this chapter.**

5 When a child permitted to testify under other law or rule is  
6 called to testify in court or by closed-circuit television, they  
7 may have the following accommodations granted to them, if the  
8 child's testimony is sought for any stage of a proceeding held  
9 pursuant to this chapter:

10 (1) Upon motion made by the child's representative or any  
11 party to the proceeding, or *sua sponte*, the taking of testimony  
12 from a child may be limited in duration and/or set at a time that  
13 accommodates the child's school and activity schedule. The court  
14 may order temporary breaks in the proceedings when the energy,  
15 comfort or attention span of the child warrants;

16 (2) Upon motion made by the child's representative or any  
17 party to the proceeding, or *sua sponte*, the court may allow the  
18 child to have a toy, blanket or similar item in his or her  
19 possession while testifying.

20 (3) Upon motion made by the child's representative or any  
21 party to the proceeding, or *sua sponte*, the court may designate a  
22 support person, who shall be present in the courtroom, in view of  
23 the child witness. The support person may not provide the child  
24 with an answer to any question directed to the child during the  
25 course of the child's testimony or otherwise prompt the child or  
26 influence the testimony of the child. If the support person  
27 attempts to influence or affect in any manner the testimony of the  
28 child at any time the court shall exclude that support person. As

1 long as the support person does not obscure the child from the view  
2 of the parties or the trier of fact, the court may allow the  
3 support person to remain in close proximity to the child during the  
4 child's testimony if:

5 (A) All parties agree; or

6 (B) If the movant proves by a preponderance of evidence that:

7 (i) The child in question cannot reliably testify without the  
8 support person in his or her presence; and

9 (ii) Allowing the support person is not likely to prejudice  
10 the trier of fact in hearing and evaluating the child's testimony.

11 (4) Upon motion made by the child's representative or any  
12 party to the proceeding, or *sua sponte*, the court may order such  
13 accommodations as are appropriate under the circumstances to ensure  
14 the comfort of a child witness, including, but not limited to, the  
15 following measures:

16 (A) Adjusting the layout of the courtroom or hearing room;

17 (B) Conducting the proceedings outside the normal courtroom;

18 (C) Relaxing the formalities of the proceedings;

19 (D) Permitting properly trained facility animals to be present  
20 in the hearing; or

21 (E) Permitting the use of a properly constructed screen, which  
22 would permit the persons in the courtroom or hearing room to see  
23 the child but would obscure the child's view of the parties.

24 (5) In circumstances where a party has chosen to proceed  
25 without counsel, the court may appoint stand-by counsel for that  
26 party and may order stand-by counsel to question a child witness on  
27 behalf of the pro se party, if the court finds that there is a  
28 substantial likelihood that emotional harm would come to the child

1 if the pro se party were allowed to question the child directly.

2 (6) The court shall encourage and permit the use of  
3 age-appropriate and developmentally appropriate language, both in  
4 questions to the child witness and also in explanations of the  
5 court process for the child witness.

6 (7) If the child is also a victim, the court shall ensure that  
7 all steps necessary to secure the physical safety of the child,  
8 both in the courtroom and during periods of time that the child may  
9 spend waiting in court, have been taken.

10 (8) The court shall take all steps necessary to ensure that  
11 any sensitive information, including address or physical location  
12 of the child witness and/or the immediate family of the child  
13 witness, remains confidential.

14 (9) For any case in which the child witness is alleged to have  
15 been emotionally, sexually and/or physically abused, the child's  
16 representative shall be given notice of pretrial discovery motions,  
17 with that notice being required to be given in sufficient time to  
18 allow the guardian ad litem or counsel for the child to file any  
19 pleadings, motions or responses deemed appropriate to the  
20 situation.

21 **§48-1-403. Protection of recordings made of statements of child**  
22 **witnesses.**

23 (a) Upon the filing of an action pursuant to this chapter, any  
24 videotape or other type of recording of a statement of a child  
25 witness concerning matters that are the subject of that court  
26 proceeding is the property of the court for the purpose of  
27 protecting the privacy of the child. The recordings shall be made  
28 available to counsel and the parties for viewing purposes, but may

1 not be duplicated without an order of the court which specifies to  
2 whom the duplicate records are to be given and the purpose of the  
3 use of the recording by that individual. The order shall also  
4 prohibit the recording from being shown to unauthorized  
5 individuals, prohibit the recording from being further duplicated  
6 and require the return to the court of all copies of the recording  
7 at the conclusion of the stated purpose.

8 (b) Upon return of the recording to the court, the recording  
9 shall be placed in a sealed file within the court's official file.

10 **§48-1-404. Further procedures in rule.**

11 Court rules of procedure may expand upon the procedures set  
12 forth in this article, as necessary to ensure the interests of  
13 justice are served.

14 **CHAPTER 49. CHILD WELFARE.**

15 **ARTICLE 1A. PROCEDURES FOR TESTIMONY OF CHILDREN.**

16 **§49-1A-1. Additional definition with regard to child witnesses.**

17 For the purposes of this article, regarding child witnesses  
18 "child" means any person who is under the age of eighteen years of  
19 age.

20 **§49-1A-2. Rights of child witnesses in proceedings held pursuant to  
21 this chapter.**

22 When a child permitted to testify under other law or rule is  
23 called to testify in court or by closed-circuit television, they  
24 may have the following accommodations granted to them, if the  
25 child's testimony is sought for any stage of a proceeding held  
26 pursuant to this chapter:

27 (1) Upon motion made by the child's representative or any  
28 party to the proceeding, or *sua sponte*, the taking of testimony

1 from a child may be limited in duration and/or set at a time that  
2 accommodates the child's school and activity schedule. The court  
3 may order temporary breaks in the proceedings when the energy,  
4 comfort or attention span of the child warrants;

5 (2) Upon motion made by the child's representative or any  
6 party to the proceeding, or *sua sponte*, the court may allow the  
7 child to have a toy, blanket or similar item in his or her  
8 possession while testifying.

9 (3) Upon motion made by the child's representative or any  
10 party to the proceeding, or *sua sponte*, the court may designate a  
11 support person, who shall be present in the courtroom, in view of  
12 the child witness. The support person may not provide the child  
13 with an answer to any question directed to the child during the  
14 course of the child's testimony or otherwise prompt the child or  
15 influence the testimony of the child. If the support person  
16 attempts to influence or affect in any manner the testimony of the  
17 child at any time the court shall exclude that support person. As  
18 long as the support person does not obscure the child from the view  
19 of the parties or the trier of fact, the court may allow the  
20 support person to remain in close proximity to the child during the  
21 child's testimony if:

22 (A) All parties agree; or

23 (B) If the movant proves by a preponderance of evidence that:

24 (i) The child in question cannot reliably testify without the  
25 support person in his or her presence; and

26 (ii) Allowing the support person is not likely to prejudice  
27 the trier of fact in hearing and evaluating the child's testimony.

28 (4) Upon motion made by the child's representative or any

1 party to the proceeding, or *sua sponte*, the court may order such  
2 accommodations as are appropriate under the circumstances to ensure  
3 the comfort of a child witness, including, but not limited to, the  
4 following measures:

5 (A) Adjusting the layout of the courtroom or hearing room;

6 (B) Conducting the proceedings outside the normal courtroom;

7 (C) Relaxing the formalities of the proceedings;

8 (D) Permitting properly trained facility animals to be present  
9 in the hearing; or

10 (E) Permitting the use of a properly constructed screen, which  
11 would permit the persons in the courtroom or hearing room to see  
12 the child but would obscure the child's view of the parties.

13 (5) In circumstances where a party has chosen to proceed  
14 without counsel, the court may appoint stand-by counsel for that  
15 party and may order stand-by counsel to question a child witness on  
16 behalf of the pro se party, if the court finds that there is a  
17 substantial likelihood that emotional harm would come to the child  
18 if the pro se party were allowed to question the child directly.

19 (6) The court shall encourage and permit the use of  
20 age-appropriate and developmentally appropriate language, both in  
21 questions to the child witness and also in explanations of the  
22 court process for the child witness.

23 (7) If the child is also a victim, the court shall ensure that  
24 all steps necessary to secure the physical safety of the child,  
25 both in the courtroom and during periods of time that the child may  
26 spend waiting in court, have been taken.

27 (8) The court shall take all steps necessary to ensure that  
28 any sensitive information, including address or physical location



1 of the child witness and/or the immediate family of the child  
2 witness, remains confidential.

3 (9) For any case in which the child witness is alleged to have  
4 been emotionally, sexually and/or physically abused, the child's  
5 representative shall be given notice of pretrial discovery motions,  
6 with that notice being required to be given in sufficient time to  
7 allow the guardian ad litem or counsel for the child to file any  
8 pleadings, motions or responses deemed appropriate to the  
9 situation.

10 **§49-1A-3. Protection of recordings made of statements of child**  
11 **witnesses.**

12 (a) Upon the filing of an action pursuant to this chapter, any  
13 videotape or other type of recording of a statement of a child  
14 witness concerning matters that are the subject of this court  
15 proceeding is the property of the court for the purpose of  
16 protecting the privacy of the child. The recordings shall be made  
17 available to counsel and the parties for viewing purposes, but may  
18 not be duplicated without an order of the court which specifies to  
19 whom the duplicate records are to be given and the purpose of the  
20 use of the recording by that individual. The order shall also  
21 prohibit the recording from being shown to unauthorized  
22 individuals, prohibit the recording from being further duplicated  
23 and require the return to the court of all copies of the recording  
24 at the conclusion of the stated purpose.

25 (b) Upon return of the recording to the court, the recording  
26 shall be placed in a sealed file within the court's official file.

27 **§49-1A-4. Further procedures in rule.**

28 Court rules of procedure may expand upon the procedures set

1 forth in this article, as necessary to ensure the interests of  
2 justice are served.

3 **CHAPTER 62. CRIMINAL PROCEDURE.**

4 **ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND**  
5 **TESTIMONY OF CHILD WITNESS.**

6 **§62-6B-2. Definitions.**

7 For the purposes of this article, the words or terms defined  
8 in this section, and any variation of those words or terms required  
9 by the context, have the meanings ascribed to them in this section.  
10 These definitions are applicable unless a different meaning clearly  
11 appears from the context.

12 (1) "Child witness" means a person ~~thirteen years of age or~~  
13 ~~less~~ under the age of sixteen years of age who is or will be called  
14 to testify in a criminal matter ~~concerning an alleged violation of~~  
15 ~~the provisions of sections three, four, five and seven, article~~  
16 ~~eight b, chapter sixty one of this code in which the child is the~~  
17 ~~alleged victim~~ and who is alleged to be a victim of a crime or a  
18 witness to an alleged crime.

19 (2) "Live, ~~two-way~~ closed-circuit television" means a  
20 simultaneous transmission, by closed-circuit television or other  
21 electronic means, between the courtroom and the testimonial room.

22 (3) "Operator" means the individual authorized by the court to  
23 operate the ~~two-way~~ closed-circuit television equipment used in  
24 accordance with the provisions of this article.

25 (4) "Testimonial room" means a room within the courthouse  
26 other than the courtroom from which the testimony of a child  
27 witness or the defendant is transmitted to the courtroom by means  
28 of live, ~~two-way~~ closed-circuit television.

1 **§62-6B-3. Findings of fact required for taking testimony of child**  
2 **witness by closed-circuit television; considerations**  
3 **for court.**

4 (a) Upon a written motion filed by the prosecuting attorney,  
5 the child's attorney or the child's guardian ad litem, and upon  
6 findings of fact determined pursuant to subsection (b) of this  
7 section, a circuit court may order that the testimony of a child  
8 witness may be taken at a pretrial proceeding or at trial through  
9 the use of live, ~~two-way~~ closed-circuit television.

10 (b) Prior to ordering that the testimony of a child witness  
11 may be taken through the use of live, ~~two-way~~ closed-circuit  
12 television, the circuit court must find by clear and convincing  
13 evidence, after conducting an evidentiary hearing on this issue,  
14 that:

15 (1) The child is an otherwise competent witness;

16 (2) ~~That, absent~~ The use of live, ~~two-way~~ closed-circuit  
17 television is necessary to protect the welfare of the child  
18 witness; ~~will be unable to testify due solely to being required to~~  
19 ~~be in the physical presence of the defendant while testifying;~~

20 (3) The child witness: ~~can only testify if live, two-way~~  
21 ~~closed-circuit television is used in the trial; and~~

22 (A) Is unable to testify because of fear of doing so in the  
23 physical presence of the defendant;

24 (B) Would be harmed by testifying in the physical presence of  
25 the defendant; or

26 (C) Conduct by the defendant or defense counsel causes the  
27 child witness to be unable to testify; and

28 (4) Any fear, harm or inability found under subdivision (3) of

1 this subsection is more than the typical *de minimis* nervousness or  
2 excitement associated with being a witness in court.

3 ~~(4) That the state's ability to proceed against the defendant~~  
4 ~~without the child witness' live testimony would be substantially~~  
5 ~~impaired or precluded.~~

6 (c) The court shall consider the following factors in  
7 determining the necessity of allowing a child witness to testify by  
8 the use of live, ~~two-way~~ closed-circuit television:

9 (1) The age and maturity of the child witness;

10 (2) The facts and circumstances of the alleged offense;

11 (3) The necessity of the child's live testimony to the  
12 prosecution's ability to proceed; and

13 ~~(4) Whether or not the facts of the case involve the alleged~~  
14 ~~infliction of bodily injury to the child witness or the threat of~~  
15 ~~bodily injury to the child or another; and~~

16 ~~(5)~~ (4) Any mental or physical handicap of the child witness.

17 (d) In determining whether to allow a child witness to testify  
18 through live, ~~two-way~~ closed-circuit television the court ~~shall~~ may  
19 appoint a psychiatrist, licensed psychologist with at least five  
20 years clinical experience or a licensed clinical social worker with  
21 at least five years of significant clinical experience in the  
22 treatment and evaluation of children who shall serve as an advisor  
23 or friend of the court to provide the court with an expert opinion  
24 as to whether, to a reasonable degree of professional certainty,  
25 the child witness will suffer severe emotional harm, be unable to  
26 testify based solely on being in the physical presence of the  
27 defendant while testifying and that the child witness does not  
28 evidence signs of being subjected to undue influence or coercion.

1 The opinion of the psychiatrist, licensed psychologist or licensed  
2 clinical social worker shall be filed with the circuit court at  
3 least thirty days prior to the final hearing on the use of live,  
4 ~~two-way~~ closed-circuit television and the defendant shall be  
5 allowed to review the opinion and present evidence on the issue by  
6 the use of an expert or experts or otherwise.

7 **§62-6B-4. Procedures required for taking testimony of child**  
8 **witness by closed-circuit television; election of**  
9 **defendant; jury instruction; sanction for failure to**  
10 **follow procedures; additional accommodation options;**  
11 **recordings and confidentiality.**

12 ~~(a) If the court determines that the use of live, two-way~~  
13 ~~closed circuit testimony is necessary and orders its use the~~  
14 ~~defendant may, at any time prior to the child witness being called,~~  
15 ~~elect to absent himself from the courtroom during the child~~  
16 ~~witness' testimony. If the defendant so elects the child shall be~~  
17 ~~required to testify in the courtroom.~~

18 ~~(b)(1)~~ (a) If live, ~~two-way~~ closed-circuit television is used  
19 in the testimony of the child witness, he or she shall be taken  
20 into the testimonial room and be televised live, by ~~two-way~~ closed-  
21 circuit equipment to the view of the defendant, counsel, the court  
22 and, if applicable, the jury. ~~The projected image of the defendant~~  
23 ~~shall be visible for child witness to view if he or she chooses to~~  
24 ~~do so and the view of the child witness available to those persons~~  
25 ~~in the courtroom shall include a full body view. Only The live,~~  
26 closed-circuit television testimony shall be presented to the jury  
27 such that the jury has a clear image of the witness and all other  
28 persons present within the testimonial room. The prosecuting

1 attorney, the attorney for the defendant, the child witness's  
2 attorney and guardian ad litem and the operator of the equipment  
3 may be present in the room with the child witness during testimony.  
4 The only other person who may be present in the room with the child  
5 during the child witness's testimony is a judicial officer,  
6 appointed by the court. Only the court, the prosecuting attorney  
7 and the attorney for the defendant may question the child. In pro  
8 se proceedings, the court ~~may modify the provisions of this~~  
9 ~~subdivision relating to the role of the attorney for the defendant~~  
10 ~~to allow the pro se defendant to question the child witness in such~~  
11 ~~a manner as to cause as little psychological trauma as possible~~  
12 ~~under the circumstances shall appoint an attorney to represent the~~  
13 ~~defendant for the limited purpose of questioning the child witness~~  
14 ~~or shall conduct the examination itself.~~ The court shall permit  
15 the defendant to observe and hear the testimony of the child  
16 witness contemporaneous with the taking of the testimony. The  
17 court shall provide electronic means for the defendant and the  
18 attorney for the defendant to confer confidentially during the  
19 taking of the testimony.

20 ~~(2) If the defendant elects to not be physically present in~~  
21 ~~the courtroom during the testimony of the child witness, the~~  
22 ~~defendant shall be taken into the testimonial room and be televised~~  
23 ~~live, by two-way closed-circuit equipment to the view of the finder~~  
24 ~~of fact. and others present in the courtroom. The defendant shall~~  
25 ~~be taken to the testimonial room prior to the appearance of the~~  
26 ~~child witness in the courtroom. There shall be made and maintained~~  
27 ~~a recording of the images and sounds of all proceedings which were~~  
28 ~~televised pursuant to this article. While the defendant is in the~~

1 ~~testimonial room, the defendant shall be permitted to view the~~  
2 ~~live, televised image of the child witness and the image of those~~  
3 ~~other persons in the courtroom whom the court determines the~~  
4 ~~defendant is entitled to view. Only the court, the prosecuting~~  
5 ~~attorney and the attorney for the defendant may question the child.~~  
6 ~~In pro se proceedings, the court may modify the provisions of this~~  
7 ~~subdivision relating to the role of the attorney for the defendant~~  
8 ~~to allow the pro se defendant to question the child witness in such~~  
9 ~~a manner as to cause as little emotional distress as possible under~~  
10 ~~the circumstances. The transmission from the courtroom to the~~  
11 ~~testimonial room shall be sufficient to permit the defendant to~~  
12 ~~observe and hear the testimony of the child witness contemporaneous~~  
13 ~~with the taking of the testimony. No proceedings other than the~~  
14 ~~taking of the testimony of the child witness shall occur while the~~  
15 ~~defendant is outside the courtroom. In the event that the~~  
16 ~~defendant elects that the attorney for the defendant remain in the~~  
17 ~~courtroom while the defendant is in the testimonial room, the court~~  
18 ~~shall provide electronic means for the defendant and the attorney~~  
19 ~~for the defendant to confer confidentially during the taking of the~~  
20 ~~testimony.~~

21       ~~(c)~~ (b) In every case where the provisions of the article are  
22 used, the jury, at a minimum, shall be instructed, unless such  
23 instruction is waived by the defendant, that the use of live, ~~two-~~  
24 ~~way~~ closed-circuit television is being used solely for the child's  
25 convenience, that the use of the medium cannot as a matter of law  
26 and fact be considered as anything other than being for the  
27 convenience of the child witness and that to infer anything else  
28 would constitute a violation of the oath taken by the jurors.

1        (c) If the child is a victim, the court shall ensure that all  
2 steps necessary to secure the physical safety of the child, both in  
3 the courtroom and during periods of time that the child may spend  
4 waiting in court, have been taken.

5        (d) The court shall take all steps necessary to ensure that  
6 any sensitive information, including address or physical location  
7 of the child witness and/or the immediate family of the child  
8 witness, remains confidential.

9        (e) For any case in which the child witness is alleged to have  
10 been emotionally, sexually and/or physically abused, the child's  
11 representative shall be given notice of pretrial discovery motions,  
12 with that notice being required to be given in sufficient time to  
13 allow the guardian ad litem or counsel for the child to file any  
14 pleadings, motions or responses deemed appropriate to the  
15 situation.

16        (f) Any videotape or other type of recording of a statement of  
17 a child witness concerning matters that are the subject of a court  
18 proceeding is the property of the court for the purpose of  
19 protecting the privacy of the child. The recordings shall be made  
20 available to counsel and the parties for viewing purposes, but may  
21 not be duplicated without an order of the court which specifies to  
22 whom the duplicate records are to be given and the purpose of the  
23 use of the recording by that individual. The order shall also  
24 prohibit the recording from being shown to unauthorized  
25 individuals, prohibit the recording from being further duplicated  
26 and require the return to the court of all copies of the recording  
27 at the conclusion of the stated purpose. Upon return of the  
28 recording to the court, the recording shall be placed in a sealed



1 file within the court's official file.

2 (g) The court may also grant the following accommodations to  
3 a child witness who testifies in court rather than by live, closed-  
4 circuit television, as necessary and appropriate, upon motion made  
5 by the child's representative or any party to the proceeding and a  
6 finding by the court that the accommodation is necessary for the  
7 child witness to testify effectively and the accommodation will not  
8 cause unfair prejudice:

9 (1) The court may allow the child witness to have a toy,  
10 blanket or similar item in his or her possession while testifying;  
11 and

12 (2) The court may designate a support person, who shall be  
13 seated in the courtroom, in view of the child witness either at one  
14 of the counsel tables, in the first row of seating for the general  
15 public or in some other similar seating location. The support  
16 person may not provide the child with an answer to any question  
17 directed to the child witness during the course of the child's  
18 testimony or otherwise prompt the child or influence the testimony  
19 of the child witness. If the support person attempts to influence  
20 or affect in any manner the testimony of the child witness at any  
21 time the court shall exclude that support person. Notwithstanding  
22 the requirement of this subdivision that the support person be  
23 seated in particular areas of the courtroom, as long as the support  
24 person does not obscure the child witness from the view of the  
25 parties, the judge or the jury, the court may allow the support  
26 person to remain in close proximity to the child witness during the  
27 child's testimony if:

28 (A) All parties agree; or

1       (B) The movant proves by clear and convincing evidence that:  
2       (i) The child witness in question cannot reliably testify  
3 without the support person in his or her presence;  
4       (ii) No other alternative to having the support person in his  
5 or her presence would allow the child witness to reliably testify;  
6 and  
7       (iii) Allowing the support person is not likely to prejudice  
8 the trier of fact in hearing and evaluating the child witness's  
9 testimony.

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(NOTE: The purpose of this bill is to create procedures and protections for child witnesses in domestic relations and child abuse and neglect proceedings, and update procedures in criminal proceedings.

§48-1-401, §48-1-402, §48-1-403, §48-1-404, §48-1-405, §49-1A-1, §49-1A-2, §49-1A-3 and §49-1A-4 are new; therefore, strike-throughs and underscoring have been omitted.

In §62-6B-2, §62-6B-3 and §62-6B-4 strike-throughs indicated current language that is being removed and underscoring indicates new language that is being added.)