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SENATE FILE 233

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VANDE HOEF and SOORHOLTZ

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

### A BILL FOR

1 An Act relating to the testimony and statements of child  
2 victims and witnesses.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 709A.1 RECORDED EVIDENCE.

2 Notwithstanding any rule of evidence or criminal procedure  
3 to the contrary, the provisions of this section shall apply in  
4 any criminal prosecution or juvenile court action involving a  
5 victim or witness who is a child, as defined in section 702.5.

6 For the purposes of this section, "videotape" means the  
7 visual and oral recording of events and statements on magnetic  
8 tape and includes visual and oral recordings on film or other  
9 media.

10 1. A videotape of a statement or responses of a child made  
11 prior to the trial or adjudicatory hearing shall be admissible  
12 into evidence at the trial or hearing either in lieu of or in  
13 addition to direct testimony of the child if the court, if the  
14 case is to be tried to a jury or is a juvenile action, or a  
15 different judge, if the case is to be tried to the court,  
16 determines prior to the proceeding from reviewing the tape and  
17 considering all of the surrounding circumstances that all of  
18 the following are true:

19 a. The statement was not made by the child under coercion.

20 b. The recording is both visual and oral.

21 c. No attorney for either party was present in the room  
22 where the statement was made.

23 d. No relative of the child was present in the room where  
24 the statement was made.

25 e. The recording has not been altered since it was made  
26 and accurately reflects what the child said.

27 f. The statement was not made by the child in response to  
28 questioning that was calculated to lead the child to make a  
29 particular statement.

30 g. The voices on the recording are all identified.

31 h. The taking of the child's statement on the recording  
32 was supervised by a social worker, a department of human  
33 services investigator, a law enforcement officer, or a health  
34 practitioner as defined in section 232.68.

35 i. The person who conducted the interview or otherwise

1 took the statement of the child on the recording is available  
2 to testify at the proceeding or be cross-examined by either  
3 party.

4 j. The child is available to testify.

5 k. The defendant and the defendant's attorney have been or  
6 will be afforded an opportunity to view the recording before  
7 it is offered into evidence.

8 Videotapes which become part of the court record under this  
9 subsection shall be preserved under protective order of the  
10 court in order to protect the privacy of the child. If a tape  
11 is no longer needed for evidentiary purposes following the  
12 entry of judgment and final disposition of appeal, it shall be  
13 destroyed unless the child and the child's legal guardian  
14 consent to the preservation and use of the tape for educa-  
15 tional or training use by a law enforcement or other govern-  
16 mental or nonprofit entity concerned about the welfare of  
17 child victims and witnesses.

18 2. On its own motion or the motion of the prosecuting  
19 attorney, for good cause shown, the court may order the taking  
20 of a videotaped deposition of the child which shall be admis-  
21 sible into evidence at any proceeding in lieu of or in addi-  
22 tion to the direct testimony of the child. The court may  
23 specify where the deposition is to be taken and shall exclude  
24 all persons, other than the defendant and any person desig-  
25 nated by the child or the child's guardian to act as the ad-  
26 vocate for the child or who is otherwise acting as a counselor  
27 supporting the child during such proceedings, whose presence  
28 is not necessary for the taking of the deposition.

29 Examination and cross-examination of the child shall proceed  
30 in the same manner as permitted at trial. If the court was  
31 not present at the taking of the deposition and did not then  
32 rule on any objections made by either party, the court shall  
33 rule on the objections prior to the proceeding at which the  
34 deposition is to be offered and shall order excission of any  
35 questions and responses found to be excludable.

1 3. On its own motion or the motion of the prosecuting  
2 attorney, in the interest of justice, the court may order that  
3 the testimony of a child be taken in a room other than the  
4 courtroom and be simultaneously shown by closed circuit  
5 television to the court and jury, whether or not a videotape  
6 statement or deposition of the child is offered into evidence  
7 at the same proceeding under subsection 1 or 2. The only per-  
8 sons who may be present in the room with the child during the  
9 child's testimony are the persons necessary to operate the  
10 audio and video equipment, the presiding judge, the  
11 prosecuting attorney and the defendant's attorney, the  
12 defendant, the child's guardian ad litem, if any, and any  
13 person designated by the child or the child's guardian to act  
14 as the advocate for the child or who is otherwise acting as a  
15 counselor supporting the child during such proceedings. Only  
16 the attorneys or the presiding judge may question the child.  
17 The court may require that the defendant be in an adjacent  
18 room or behind a screen or mirror that permits the defendant  
19 to see and hear the child but does not allow the child to see  
20 or hear the defendant. However, if the defendant is so  
21 confined, the court shall ensure that the defendant is  
22 afforded the ability to consult with the defendant's attorney  
23 during the child's testimony.

24 EXPLANATION

25 This bill creates a new section which provides for the use  
26 of recorded evidence in lieu of or in addition to the actual  
27 testimony of a child victim or witness.

28 Subsection 1 of the new section sets out the requirements  
29 which recorded evidence must meet prior to its use. The sub-  
30 section also provides for the use or destruction of recorded  
31 evidence after the final disposition of the case.

32 Subsection 2 of the new section provides for the authority  
33 to have a child's deposition taken for use as recorded evi-  
34 dence for the proceeding. The subsection also provides for  
35 the restrictions upon and procedures for the taking of such

1 depositions.

2 Subsection 3 of the new section provides for the taking of  
3 a child's testimony by recorded evidence in a room other than  
4 the courtroom and for its transmission into the courtroom.  
5 The subsection also sets out the persons who may be present at  
6 the taking of the testimony and provides that, where  
7 determined to be necessary, the defendant can be required to  
8 remain out of sight of the victim or witness during testimony.

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