

FEB 27 1996
JUDICIARY

HOUSE FILE 2382
BY LARKIN

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act permitting a court to order protective measures regarding
2 the testimony of a victim of sexual abuse.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2382

1 Section 1. Section 910A.14, subsections 1, 2, and 3, Code
2 1995, are amended to read as follows:

3 1. ~~Upon its own motion or upon motion of any party, a~~
4 ~~court may protect a minor, as defined in section 599.1, from~~
5 If trauma caused by testifying in the physical presence of the
6 defendant ~~where it~~ would impair ~~the minor's~~ a witness's
7 ability to communicate, upon its own motion or upon the motion
8 of any party, the court, by ordering that the testimony of the
9 minor witness be taken in a room other than the courtroom and
10 be televised by closed circuit equipment for viewing in the
11 courtroom, may protect the following witnesses:

12 (1) A minor, as defined in section 599.1.

13 (2) A witness with a mental illness, mental retardation,
14 or other developmental disability.

15 (3) A victim of sexual abuse who is testifying against the
16 alleged abuser.

17 b. ~~However, such an~~ An order for testimony via closed
18 circuit television shall be entered only upon a specific
19 finding by the court that such measures are necessary to
20 protect the minor witness from the trauma caused by the
21 presence of the defendant. In addition, the court shall
22 determine whether one-way or two-way television would
23 accomplish the necessary level of protection for the witness,
24 and shall direct that the least restrictive means of testimony
25 be used.

26 c. Only the judge, prosecuting attorney, defendant's
27 attorney, persons necessary to operate the equipment, and any
28 person whose presence, in the opinion of the court, would
29 contribute to the welfare and well-being of the minor witness
30 may be present in the room ~~with the minor~~ during the minor's
31 testimony. The judge shall inform the minor witness that the
32 defendant will not be present in the room in which the minor
33 witness will be testifying, but that the defendant will be
34 viewing the minor's testimony through closed circuit
35 television.

1 d. During the minor's testimony, the defendant shall
2 remain in the courtroom and shall be allowed to communicate
3 with the defendant's counsel, in the room where the minor
4 witness is testifying, by an appropriate electronic method.

5 ~~In addition, upon a finding of necessity, the court may~~
6 ~~allow the testimony of a victim or witness with a mental~~
7 ~~illness, mental retardation, or other developmental disability~~
8 ~~to be taken as provided in this subsection, regardless of the~~
9 ~~age of the victim or witness.~~

10 2. a. ~~The court may, upon~~ Upon its own motion or upon
11 motion of a party, the court may order that the testimony ~~of a~~
12 ~~minor, as defined in section 599.1,~~ be taken by recorded
13 deposition for use at trial, pursuant to rule of criminal
14 procedure 12(2)(b), in depositions involving the following
15 witnesses:

16 (1) A minor, as defined in section 599.1.

17 (2) A witness with a mental illness, mental retardation,
18 or other developmental disability.

19 (3) A victim of sexual abuse who is testifying against the
20 alleged abuser.

21 b. In addition to requiring that such testimony be
22 recorded by stenographic means, the court may on motion and
23 hearing, and upon a finding that the minor witness is
24 unavailable as provided in Iowa rules of evidence 804(a),
25 order the videotaping of the minor's testimony for viewing in
26 the courtroom by the court. The videotaping shall comply with
27 the provisions of rule of criminal procedure 12(2)(b), and
28 shall be admissible as evidence in the trial of the cause. ~~In~~
29 ~~addition, upon a finding of necessity, the court may allow the~~
30 ~~testimony of a victim or witness with a mental illness, mental~~
31 ~~retardation, or other developmental disability to be taken as~~
32 ~~provided in this subsection, regardless of the age of the~~
33 ~~victim or witness.~~

34 3. The court may upon motion of a party admit into evi-
35 dence the recorded statements of a child, as defined in sec-

1 ~~tion-702-5~~ victim, describing sexual contact performed with or
 2 on the ~~child~~ victim, not otherwise admissible in evidence by
 3 statute or court rule, if the court determines that the
 4 recorded statements substantially comport with the
 5 requirements for admission under Iowa rules of evidence
 6 803(24) or 804(b)(5).

7 EXPLANATION

8 This bill amends the chapter on victim and witness
 9 protection to permit adult victims of sexual abuse to utilize
 10 special procedures, currently available only to children and
 11 certain categories of adult victims, for testifying against
 12 their abusers. The changes would permit victims of sexual
 13 abuse to testify against their abusers via closed circuit
 14 television if face-to-face contact with the defendant would
 15 cause trauma that would interfere with the ability of the
 16 victim to testify, to have their depositions recorded and
 17 shown in court, or to have otherwise inadmissible recorded
 18 statements admitted as evidence, if the court is satisfied
 19 that the statements are essentially trustworthy.

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