

BILL NO. 35-0031

Thirty-Fifth Legislature of the Virgin Islands

February 27, 2023

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 chapter 301, subchapter IV, section 3510

PROPOSED BY: Senator Angel L. Bolques, Jr.

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 5, subtitle 3, part I, of the Virgin Islands Code is amended by adding a new 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 subchapter, 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.

(b) “Child” means a person who is under the age of 18, who is or is alleged to be a victim of a crime of physical abuse, sexual abuse, or exploitation, or a witness to a crime committed against another person.

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

6 (d) "Exploitation" means child pornography or child prostitution.

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

9 (f) "Multidisciplinary child abuse team" means a professional unit comprised of
10 representatives from health, social services, law enforcement, and legal services agencies to
11 coordinate the assistance needed to handle cases of child abuse.

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

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

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

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

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

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

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

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

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

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

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

14 (2) penetration of the vagina or rectum however slight by hand, finger
15 or by any object except when done as part of a recognized medical procedure; and

16 (3) sexual bestiality.

17 (k) “Sex crime” means an act of sexual abuse that is a criminal act.

18 **§ 3513. Alternatives to Live In-Court Testimony**

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

20 (1) In a proceeding involving an alleged offense against a child, the attorney for
21 the Government, the child’s attorney, or a guardian ad litem, appointed under section 3518
22 of this chapter, may move the court for an order that the child’s testimony be taken in a
23 room outside the courtroom and be televised by two-way closed circuit television. The
24 party seeking such an order shall file an appropriate motion at least seven (7) days before
25 the trial date. If a party moves the court for an order outside the seven days, the court may

1 still issue an order if it finds that the need for the order was not reasonably foreseeable
2 and good cause exists for the order to be entered.

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

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

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

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

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

13 (3) The court shall support a ruling on the child's inability to testify with findings
14 on the record. In determining whether the impact on an individual child of one or more
15 of the factors described in paragraph (2) is so substantial as to justify an order under
16 paragraph (1), the court may question the minor in chambers, or at some other comfortable
17 place other than the courtroom, for a reasonable period of time with the child attendant,
18 the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

19 (4) If the court orders that testimony be taken by closed-circuit television, the
20 attorney for the Government and the defendant's attorney, not including a party acting as
21 an attorney, pro se, shall be present in the room outside the courtroom with the child and
22 the child shall be subjected to direct and cross-examination. The only other person who
23 may be permitted in the room with the child during the child's testimony are:

24 (A) the child's attorney or guardian ad litem appointed under section 3518
25 of this chapter;

1 (B) persons necessary to operate the closed-circuit television equipment;

2 (C) a judicial officer, appointed by the court; and

3 (D) other persons whose presence is determined by the court to be necessary
4 to the welfare and well-being of the child, including an adult attendant.

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

11 (b) Videotaped deposition of child

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

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

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

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

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

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

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

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

9 (A) the attorney for the Government;

10 (B) the defendant's attorney;

11 (C) the child's attorney or guardian ad litem appointed under section 3518
12 of this chapter;

13 (D) persons necessary to operate the videotape equipment;

14 (E) subject to paragraph (2)(D) of this subsection, the defendant; and

15 (F) other persons whose presence is determined by the court to be necessary
16 to the welfare and well-being of the child.

17 (5) The defendant shall be afforded the rights applicable to defendants during
18 trial, including the right to an attorney, the right to be confronted with the witness against
19 the defendant, and the right to cross-examine the child.

20 (6) If the preliminary finding of inability under paragraph (2) of this section is
21 based on evidence that the child is unable to testify in the physical presence of the
22 defendant, the court may order that the defendant, including a defendant represented pro
23 se, be excluded from the room in which the deposition is conducted. If the court orders
24 that the defendant be excluded from the deposition room, the court shall order that two-

1 way closed circuit television equipment relay the defendant's image into the room in
2 which the child is testifying, and the child's testimony into the room in which the
3 defendant is viewing the proceeding, and that the defendant be provided with a means of
4 private, contemporaneous communication with the defendant's attorney during the
5 deposition.

6 (7) The complete record of the examination of the child, including the image and
7 voices of all persons who in any way participated in the examination, must be made and
8 preserved on video tape in addition to a stenographical recording. The videotape must be
9 transmitted to the clerk of the court in which the action is pending, and must be made
10 available for viewing to the prosecuting attorney, the defendant, and the defendant's
11 attorney during ordinary business hours.

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

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

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

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

1 **§3514. Competency Examinations**

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

4 (b) A child is presumed to be competent.

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

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

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

12 (1) the judge;

13 (2) the attorney for the Government;

14 (3) the defendant's attorney;

15 (4) a court reporter; and

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

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

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

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

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

6 **§3515. Privacy Protection**

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

9 (1) keep all documents that disclose the name or any other information
10 concerning a child in a secure place to which no person who does not have reason to know
11 their contents has access; and

12 (2) disclose documents described in subsection (c) of this section, or the
13 information in them that concerns a child only to persons who, by reason of their
14 participation in the proceeding, have reason to know such information.

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

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

19 (2) employees of the court;

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

23 (4) members of the jury.

1 (c) All papers to be filed in court that disclose the child's name, or any other information
2 concerning a child, must be filed under seal without necessity of obtaining a court order. The
3 person who makes the filing shall submit to the clerk of the court:

4 (1) the complete paper to be kept under seal; and

5 (2) the paper with the portions of it that disclose the child's name, or other
6 information concerning the child, redacted to be placed in the public record.

7 (d) On motion by any person the court may issue an order protecting the child from
8 public disclosure of the child's name, or any other information concerning the child in the course
9 of the proceedings, if the court determines that there is a significant possibility that such
10 disclosure would be detrimental to the child.

11 (e) A protective order issued under subsection (d) of this section may:

12 (1) provide that the testimony of a child witness, and the testimony of any other
13 witness, when the attorney who calls the witness has reason to anticipate that the child's
14 name, or any other information concerning a child may be divulged in the testimony, be
15 taken in a closed courtroom; and

16 (2) provide for any other measures that may be necessary to protect the privacy
17 of the child.

18 (f) This section does not prohibit disclosure of the child's name, or other information
19 concerning the child to the defendant, the defendant's attorney, a multidisciplinary child abuse
20 team, guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court,
21 disclosure is necessary to the welfare and well-being of the child.

22 § 3516. Closing the Courtroom

23 When a child testifies, the court may order all persons excluded from the courtroom,
24 including members of the press, who do not have a direct interest in the case. Such an order
25 may be made if the court determines that requiring the child to testify in open court would cause

1 substantial psychological harm to the child, or would result in the child's inability to
2 communicate effectively. Such an order must be narrowly tailored to serve the Government's
3 specific compelling interest.

4 **§ 3517. Victim Impact Statement**

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

14 **§ 3518. Use of Multidisciplinary Child Abuse Teams**

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

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

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

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

25 (3) medical evaluations related to abuse or neglect;

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

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

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

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

10 **§ 3519. Guardian Ad Litem**

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

20 (b) A guardian ad litem may attend all the depositions, hearings, and trial proceedings
21 in which the child participates, and make recommendations to the court concerning the welfare
22 of the child. The guardian ad litem may have access to all reports, evaluations and records,
23 except attorney's work product, necessary to effectively advocate for the child. The extent of
24 access to grand jury materials is limited to the access routinely provided to victims and their
25 representatives. A guardian ad litem shall marshal and coordinate the delivery of resources and

1 special services to the child. A guardian ad litem shall not be compelled to testify in any court
2 action or proceeding concerning any information or opinion received from the child in the
3 course of serving as a guardian ad litem.

4 (c) A guardian ad litem is presumed to be acting in good faith and is immune from civil
5 and criminal liability for complying with the guardian's lawful duties described in subsection
6 (b) of this section.

7 **§ 3520. Adult Attendant**

8 A child testifying at or attending a judicial proceeding shall have the right to be
9 accompanied by an adult attendant to provide emotional support to the child. The court may
10 allow the adult attendant to remain in close physical proximity to or in contact with the child
11 while the child testifies. The court may allow the adult attendant to hold the child's hand or
12 allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An
13 adult attendant may not provide the child with an answer to any question directed to the child
14 during the child's testimony or otherwise prompt the child. The image of the child attendant,
15 for the time the child is testifying or being deposed, must be recorded on videotape.

16 **§ 3520a. Speedy Trial**

17 In a proceeding in which a child is called to give testimony, on motion by the attorney for
18 the Government or a guardian ad litem, or on its own motion, the court may designate the case
19 as being of special public importance. In cases so designated, the court shall, consistent with
20 these rules, expedite the proceeding and ensure that it takes precedence over any other. The
21 court shall ensure a speedy trial in order to minimize the length of time the child must endure
22 the stress of involvement with the criminal process. When deciding whether to grant a
23 continuance, the court shall take into consideration the age of the child and the potential adverse
24 impact the delay may have on the child's well-being. The court shall make written findings of
25 fact and conclusions of law when granting a continuance in cases involving a child.

1 **§ 3520b. Stay of Civil Action**

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

8 **§ 3520c Testimonial Aids**

9 The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or
10 any other demonstrative device the court deems appropriate for the purpose of assisting a child
11 in testifying.

12 **§3520d. Prohibition on Reproduction of Child Pornography**

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

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

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

