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House Bill 804 (COMMITTEE SUBSTITUTE)

By: Representatives Lindsey of the 54th, Brockway of the 102nd, Jones of the 62nd, Ramsey of the 72nd, and Pak of the 108th

A BILL TO BE ENTITLED AN ACT

- 1 To amend Article 3 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated,
- 2 relating to conduct of trial proceedings, so as to repeal provisions relating to the testimony
- 3 of a child ten years old or younger by closed circuit television and persons entitled to be
- 4 present; to provide for the testimony of individuals under 18 years of age outside the physical
- 5 presence of an accused in criminal proceedings under certain circumstances; to provide for
- 6 related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

- 9 Article 3 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated, relating to
- 10 conduct of trial proceedings, is amended by repealing Code Section 17-8-55, relating to the
- testimony of a child ten years old or younger by closed circuit television and persons entitled
- 12 to be present, and by enacting a new Code Section 17-8-55 to read as follows:
- 13 "17-8-55.
- 14 (a) As used in this Code section, the term 'child' means an individual who is under 18 years
- of age.
- 16 (b) This Code section shall apply to all proceedings when a child is a witness to or an
- 17 <u>alleged victim of a violation of Code Section 16-5-1, 16-5-20, 16-5-23, 16-5-23.1, 16-5-40,</u>
- 18 <u>16-5-70, 16-5-90, 16-5-95, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5, 16-6-5.1, 16-6-11,</u>
- 19 <u>16-6-14, 16-6-22, 16-6-22.1, 16-6-22.2, 16-8-41, or 16-15-4.</u>
- 20 (c) The court, upon the motion of the prosecuting attorney, the motion by a proponent for
- 21 <u>a child, or on its own motion, shall hold an evidentiary hearing to determine whether a</u>
- 22 <u>child shall testify outside the physical presence of the accused. Such motion shall be filed,</u>
- 23 or requested by the court, at least ten days prior to trial unless the court shortens such time
- 24 <u>period for good cause, as it deems just under the circumstances.</u>
- 25 (d) The court may order a child to testify outside the physical presence of the accused,
- 26 provided that the court finds by a preponderance of the evidence that such child is likely

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27 <u>to suffer serious psychological or emotional distress which impairs such child's ability to</u>

- 28 <u>communicate as a result of testifying in the presence of the accused. In determining</u>
- 29 whether a preponderance of the evidence has been shown, the court may consider any one
- or more of the following circumstances:
- 31 (1) The manner of the commission of the offense being particularly heinous or
- 32 <u>characterized by aggravating circumstances;</u>
- 33 (2) The child's age or susceptibility to psychological or emotional distress on account of
- a physical or mental condition which existed before the alleged commission of the
- 35 <u>offense</u>;
- 36 (3) At the time of the alleged offense, the accused was:
- 37 (A) The parent, guardian, legal custodian, or other person responsible for the custody
- or care of the child at the relevant time; or
- 39 (B) A person who maintains or maintained an ongoing personal relationship with such
- 40 <u>child's parent, guardian, legal custodian, or other person responsible for the custody or</u>
- 41 <u>care of the child at the relevant time and the relationship involved the person living in</u>
- or frequent and repeated presence in the same household or premises as the child;
- 43 (4) The alleged offense was part of an ongoing course of conduct committed by the
- 44 <u>accused against the child over an extended period of time;</u>
- 45 (5) A deadly weapon or dangerous instrument was used during the commission of the
- 46 <u>alleged offense</u>;
- 47 (6) The accused has inflicted serious physical injury upon the child;
- 48 (7) A threat, express or implied, of physical violence to the child or a third person if the
- 49 <u>child were to report the incident to any person or communicate information to or</u>
- 50 cooperate with a court, grand jury, prosecutor, police officer, or law enforcement office
- 51 concerning the incident has been made by or on behalf of the accused;
- 52 (8) A threat, express or implied, of the incarceration of a parent, relative, or guardian of
- 53 the child, the removal of the child from the family, or the dissolution of the family of the
- 54 <u>child if the child were to report the incident to any person or communicate information</u>
- 55 <u>to or cooperate with a court, grand jury, prosecutor, police officer, or law enforcement</u>
- office concerning the incident has been made by or on behalf of the accused;
- 57 (9) A witness other than the child has received a threat of physical violence directed at
- 58 such witness or to a third person by or on behalf of the accused, and the child is aware of
- 59 <u>such threat;</u>
- 60 (10) The accused, at the time of the inquiry:
- 61 (A) Is living in the same household with the child;
- 62 (B) Has ready access to the child; or
- 63 (C) Is providing substantial financial support for the child; or

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64 (11) According to expert testimony, the child would be particularly susceptible to

- 65 <u>psychological or emotional distress if required to testify in open court in the physical</u>
- 66 <u>presence of the accused.</u>
- 67 (e) A court order allowing or not allowing a child to testify outside the physical presence
- of the accused shall state the findings of fact and conclusions of law that support the court's
- 69 <u>determination</u>. An order allowing the use of such testimony shall:
- 70 (1) State the method by which such child shall testify;
- 71 (2) List any individual or category of individuals allowed to be in the presence of such
- 72 <u>child during such testimony, including the individuals the court finds contribute to the</u>
- welfare and well-being of the child during his or her testimony;
- 74 (3) State any special conditions necessary to facilitate the cross-examination of such
- 75 child;
- 76 (4) State any condition or limitation upon the participation of individuals in the child's
- 77 presence during such child's testimony;
- 78 (5) Provide that the accused shall not be permitted to be in the physical presence of a
- 79 <u>child during his or her testimony if the accused is pro se; and</u>
- 80 (6) State any other condition necessary for taking or presenting such testimony.
- 81 (f) The method used for allowing a child to testify outside the physical presence of the
- 82 accused shall allow the judge, jury, and accused to observe the demeanor of the child as if
- he or she were testifying in the courtroom. When such testimony occurs it shall be
- 84 <u>transmitted to the courtroom by any device or combination of devices capable of projecting</u>
- 85 <u>a live visual and oral transmission, including, but not limited to, a two-way closed circuit</u>
- 86 <u>television broadcast, an Internet broadcast, or other simultaneous electronic means. The</u>
- 87 <u>court shall ensure that:</u>
- 88 (1) The transmitting equipment is capable of making an accurate transmission and is
- 89 operated by a competent operator;
- 90 (2) The transmission is in color and the child is visible at all times;
- 91 (3) Every voice on the transmission is audible and identified;
- 92 (4) The courtroom is equipped with monitors which permit the jury, the accused, and
- others present in the courtroom to see and hear the transmission; and
- 94 (5) The image and voice of the child, as well as the image of all other persons other than
- 95 the operator present in the testimonial room, are transmitted live."

96 SECTION 2.

97 All laws and parts of laws in conflict with this Act are repealed.