

SENATE SUBSTITUTE TO HB 804:

AS PASSED SENATE

**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
11 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 17 years
15 of age.

16 (b) This Code section shall apply to all proceedings when a child is a witness to or an
17 alleged victim of a violation of Code Section 16-5-1, 16-5-20, 16-5-23, 16-5-23.1, 16-5-40,
18 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,
19 16-6-14, 16-6-22, 16-6-22.1, 16-6-22.2, 16-8-41, or 16-15-4.

20 (c) The court, upon the motion of the prosecuting attorney or the parent, legal guardian,
21 or custodian of a child, or on its own motion, shall hold an evidentiary hearing to determine
22 whether a child shall testify outside the physical presence of the accused. Such motion
23 shall be filed, or requested by the court, at least ten days prior to trial unless the court
24 shortens such time period for good cause, as it deems just under the circumstances.

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

27 to suffer serious psychological or emotional distress or trauma which impairs such child's
28 ability to communicate as a result of testifying in the presence of the accused. In
29 determining whether a preponderance of the evidence has been shown, the court may
30 consider any one or more of the following circumstances:

31 (1) The manner of the commission of the offense being particularly heinous or
32 characterized by aggravating circumstances;

33 (2) The child's age or susceptibility to psychological or emotional distress or trauma on
34 account of a physical or mental condition which existed before the alleged commission
35 of the offense;

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
38 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 child's parent, guardian, legal custodian, or other person responsible for the custody or
41 care of the child at the relevant time and the relationship involved the person living in
42 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 accused against the child over an extended period of time;

45 (5) A deadly weapon or dangerous instrument was used during the commission of the
46 alleged offense;

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 child were to report the incident to any person or communicate information to or
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 child if the child were to report the incident to any person or communicate information
55 to or cooperate with a court, grand jury, prosecutor, police officer, or law enforcement
56 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 such threat;

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

64 (11) According to expert testimony, the child would be particularly susceptible to
65 psychological or emotional distress or trauma if required to testify in open court in the
66 physical presence of the accused.

67 (e) A court order allowing or not allowing a child to testify outside the physical presence
68 of the accused shall state the findings of fact and conclusions of law that support the court's
69 determination. 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 child during such testimony, including the individuals the court finds contribute to the
73 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 child during his or her testimony if the accused is pro se;

80 (6) Provide that if counsel for the accused or the accused is precluded from being
81 physically present during the child's testimony, then the prosecuting attorney shall
82 likewise be precluded from being physically present; and

83 (7) State any other condition necessary for taking or presenting such testimony.

84 (f) The method used for allowing a child to testify outside the physical presence of the
85 accused shall allow the judge, jury, and accused to observe the demeanor of the child as if
86 he or she were testifying in the courtroom. When such testimony occurs it shall be
87 transmitted to the courtroom by any device or combination of devices capable of projecting
88 a live visual and oral transmission, including, but not limited to, a two-way closed circuit
89 television broadcast, an Internet broadcast, or other simultaneous electronic means. The
90 court shall ensure that:

91 (1) The transmitting equipment is capable of making an accurate transmission and is
92 operated by a competent operator;

93 (2) The transmission is in color and the child is visible at all times;

94 (3) Every voice on the transmission is audible and identified;

95 (4) The courtroom is equipped with monitors which permit the jury, the accused, and
96 others present in the courtroom to see and hear the transmission; and

97 (5) The image and voice of the child, as well as the image of all other persons other than
98 the operator present in the testimonial room, are transmitted live."

99

SECTION 2.

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