

1 HB438  
2 216914-1  
3 By Representative Coleman  
4 RFD: Judiciary  
5 First Read: 02-MAR-22

SYNOPSIS: Under existing law, when a victim or witness to a sex crime is under the age of 16 years, on motion of the district attorney or Attorney General, the court may take the deposition of the victim or witness using video equipment outside of the presence of the defendant.

This bill would authorize victims of human trafficking, without regard to age, to have their depositions taken using video equipment outside of the presence of the defendant.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to criminal procedure; to amend Section 15-25-2, Code of Alabama 1975, to authorize the taking of depositions by video equipment of victims and witnesses of human trafficking under certain conditions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Section 15-25-2, Code of Alabama 1975, is  
2 amended to read as follows:

3           "§15-25-2.

4           "(a) (1) In any criminal prosecution referred to in  
5 Section 15-25-1, the court, upon motion of the district  
6 attorney or Attorney General, for good cause shown and after  
7 notice to the defendant, may order the taking of a video  
8 deposition of an alleged victim of or witness to the crime who  
9 is under the age of 16 at the time of the order.

10           "(2) In any criminal prosecution under Article 8 of  
11 Chapter 6 of Title 13A, the court, upon motion of the district  
12 attorney or Attorney General, for good cause shown and after  
13 notice to the defendant, may order the taking of a video  
14 deposition of an alleged victim of or witness to the crime,  
15 without regard to the age of the victim or witness.

16           "(b) On any motion for a video deposition of the  
17 victim or a witness, the court shall consider the age and  
18 maturity of the ~~child~~ victim or witness, the nature of the  
19 offense, the nature of testimony that may be expected, and the  
20 possible effect that the testimony in person at trial may have  
21 on the victim or witness, along with any other relevant  
22 matters that may be required by Supreme Court rule.

23           "(c) During the recording of a video deposition  
24 authorized pursuant to this section, the following persons  
25 shall be in the room with the ~~child~~ victim or witness: The  
26 prosecuting attorney, the attorney for the defendant, and a  
27 person whose presence, in the judgment of the court,

1 contributes to the well-being of the ~~child~~ victim or witness  
2 and who has dealt with the ~~child~~ victim or witness in a  
3 therapeutic setting regarding the abuse. Additional persons,  
4 other than the defendant, may be admitted into the room in the  
5 discretion of the court.

6 "(d) Examination and cross-examination of the  
7 alleged victim or witness shall proceed at the taking of the  
8 video deposition as though the alleged victim or witness were  
9 testifying personally in the trial of the case. The state  
10 shall provide the attorney for the defendant with reasonable  
11 access and means to view and hear the video deposition at a  
12 suitable and reasonable time prior to the trial of the case.  
13 Objections to the introduction into the record of the  
14 deposition shall be heard by the judge in whose presence the  
15 deposition was taken, and unless the court determines that its  
16 introduction in lieu of the victim's or witness's actual  
17 appearance as a witness at the trial will unfairly prejudice  
18 the defendant, the video deposition shall be entered into the  
19 record by the state in lieu of the direct testimony of the  
20 alleged victim or witness and shall be viewed and heard at the  
21 trial of the case.

22 "(e) For the purposes of this section, "video  
23 deposition" means the recording of video, with sound, of  
24 witness testimony made under oath to be entered in the record  
25 in a judicial proceeding.

26 "(f) The Supreme Court may adopt rules of procedure  
27 regarding the taking and use of video depositions in criminal

1 proceedings and juvenile cases, as well as transcription of  
2 video depositions in appeals of those cases.

3 "(g) All costs associated with the recording of a  
4 deposition ordered pursuant to this article shall be paid by  
5 the state. The district attorney shall submit all related cost  
6 bills to the state Comptroller for approval and payment from  
7 the fund entitled Court Costs Not Otherwise Provided For.

8 "(h) All recordings of video depositions ordered  
9 pursuant to this article shall be subject to any protective  
10 order of the court for the purpose of protecting the privacy  
11 of the victim of the offense.

12 "(i) When necessary, the operator of the equipment  
13 used to record video depositions may also be in the room  
14 during the taking of the deposition and the operator shall  
15 make every effort to be unobtrusive.

16 "(j) Only the court, the prosecuting attorney, and  
17 the attorney for the defendant may question the ~~child~~ victim  
18 or witness. During the testimony of the ~~child~~ victim or  
19 witness, the defendant shall be provided access to view the  
20 testimony out of the presence of the ~~child~~ victim or witness  
21 and shall be allowed to communicate with his or her attorney  
22 by any appropriate election method.

23 "(k) This section shall not apply when the defendant  
24 is an attorney pro se."

25 Section 2. This act shall become effective on the  
26 first day of the third month following its passage and  
27 approval by the Governor, or its otherwise becoming law.

