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NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE
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101ST CONGRESS

1ST SESSION

S. 533

To protect the rights of victims of crime and to establish a Federal
victim's bill of rights for children.

NCJRS

FEB 15 1990

IN THE SENATE OF THE UNITED STATES

ACQUISITIONS

MARCH 8 (legislative day, JANUARY 3), 1989

Mr. Reid introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To protect the rights of victims of crime and to establish a
Federal victim's bill of rights for children.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

PREAMBLE.

121855

**U.S. Department of Justice
National Institute of Justice**

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The Children of the United States are our greatest resource. Children of all ages must be protected from physical abuse, sexual abuse and exploitation. Governmental authorities must give the identification, prevention, investigation and prosecution of all forms of child abuse the highest priority. Child abusers must be held accountable for their actions to the people of this nation. All instances of child abuse cases must be handled diligently and expeditiously by those involved in the criminal justice system.

TITLE I--FEDERAL VICTIM'S SERVICES AND PROTECTIONS COMPLIANCE ACT

SEC. 101. SHORT TITLE.

This title may be cited as the "Federal Victim's Services and Protections Compliance Act".

SEC. 102. DEFINITIONS.

For purposes of this title the following terms shall have the following meanings.

1. "Law enforcement officer" means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant--

(A) authorized under law to engage in or supervise the identification, prevention, investigation or prosecution of child physical abuse, sexual abuse or exploitation; or

(B) serving as a probation or pre-trial services officer under title 18 of the U.S. Code.

SEC. 103. FEDERAL EVALUATION SYSTEM.

The Attorney General shall establish an evaluation system for law enforcement officers which shall rate such officers on their compliance

with the Victim and Witness Protection Act of 1982, the Victims of Crime Act of 1984, and any other provisions of law protecting victims of crime.

SEC. 104. FEDERAL STANDARDS.

The Attorney General shall use the evaluation system established in section 103 to create a set of standards to govern services to victims and witnesses in Federal cases, and serve as a model to States and localities.

SEC. 105. REPORT BY THE OFFICE FOR VICTIMS OF CRIME.

The Office for Victims of Crime shall report not less than once each year to the public, the Congress, and the President on victims protections generally and specifically on compliance with sections 103 and 104.

TITLE II--THE FEDERAL CHILD VICTIM'S BILL OF RIGHTS

DEFINITIONS.

1. "Child" means a person under age 18 who is a victim of, or a witness to, a crime of child physical abuse, sexual abuse, or exploitation.
2. "Exploitation" means child pornography and child prostitution.
3. "Multidisciplinary child abuse team" means any team or unit defined in the relevant state child abuse reporting laws or any team organized to respond to cases of child physical abuse, sexual abuse or exploitation. The team must include a prosecutor, and may include members from other disciplines, including but not limited to medicine, mental health and social services.

SCOPE.

This title shall apply to all criminal prosecutions for crimes of child physical abuse, sexual abuse and exploitation.

SEC. 201. AMENDMENT TO FEDERAL RULES OF CRIMINAL PROCEDURE.

The Federal Rules of Criminal Procedure are amended by adding after rule 52 the following:

"Rule 52.1 Child Victim's Rights

"(a) ALTERNATIVES TO LIVE IN-COURT TESTIMONY.--

"(1) TWO-WAY CLOSED CIRCUIT TELEVISION TESTIMONY.--

"(A) The court may, upon the motion of the prosecuting attorney, order that a child's testimony be taken in a room other than the courtroom and be transmitted by two-way closed circuit television to the courtroom to be viewed by the finder of fact. Two-way closed circuit means that the child and the defendant see and hear each other over the television monitor.

"(B) This procedure may only be used if the court determines on the record that the child's testimony under traditional court procedures would result in the child's inability to effectively communicate or the child will suffer substantial emotional or mental strain as a result. In making this determination the court may consider factors including but not limited to:

"(i) the child's maturity,

"(ii) the nature of the offense,

"(iii) the effect that testifying in the physical presence of the accused would have on the child.

"(C) Only the judge, counsel for the defense and prosecution, persons necessary to operate the equipment, and person(s) whose presence, in the opinion of the court, would contribute to the welfare and

well-being of the child, may be present in the room with the child while the child testifies.

"(D) Defense counsel may cross-examine the child as if the child were testifying in the courtroom.

"(E) The court shall ensure that the defendant and defense counsel can communicate with each other while the child is testifying.

"(F) Persons operating the closed circuit equipment shall do so, where practical, in an adjacent or nearby room or behind a screen or mirror that permits them to see and hear the child during the testimony, but which prevents the child from seeing and hearing them.

"(2) ONE-WAY CLOSED CIRCUIT TELEVISION TESTIMONY.--

"(A) The court may, upon the motion of the prosecuting attorney, order that a child's testimony be taken in a room other than the courtroom and be transmitted by closed circuit television to the courtroom to be viewed by the finder of fact.

"(B) This procedure may only be used if the court determines on the record that the child's testimony under traditional court procedures would result in the child's inability to effectively communicate or the child will suffer substantial emotional or mental strain as a result. In making this determination the court may consider factors including but not limited to:

"(i) the child's maturity,

"(ii) the nature of the offense, or

"(iii) the effect that testifying in the physical presence of the accused would have on the child.

"(C) Only the judge, the defendant, counsel for the defense and prosecution, persons necessary to operate the equipment, and person(s) whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child, may be present in the room with the child while the child testifies. Upon a finding of necessity on the record, the court may require the defendant to be sequestered in an adjacent room or behind a screen or mirror that permits the defendant to see and hear the child while the child testifies, but does not permit the child to see and hear the defendant.

"(D) Defense counsel may cross-examine the child as if the child were testifying in the courtroom.

"(E) The court shall ensure that the defendant and defense counsel can communicate with each other while the child is testifying.

"(F) Persons operating the closed circuit equipment shall do so, where practical, in an adjacent or nearby room or behind a screen or mirror that permits them to see and hear the child during the testimony, but which prevents the child from seeing and hearing them.

"(3) VIDEOTAPED DEPOSITIONS.--

"(A) The court may, upon the motion of the prosecuting attorney, order that the child's testimony be taken by videotaped deposition.

"(B) This procedure may be used if the court determines on the record that the child's testimony under traditional court procedures would result in the child's inability to effectively communicate or the child will suffer substantial emotional or mental strain as a result. In making this determination the court may consider factors including but not limited to:

"(i) the child's maturity,

"(ii) the nature of the offense, or

"(iii) the effect that testifying in the physical presence of the accused would have on the child.

This procedure may also be used if the child will be unavailable to testify at trial under Rule 804(a) of the Federal Rules of Evidence.

"(C) Such depositions shall be conducted in the same manner as trial testimony. Only the judge, the defendant, counsel for the defense and prosecution, persons necessary to operate the equipment, and person(s) whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child, may be present in the room with the child while the child testifies. Upon a finding of necessity on the record, the court may require the defendant to be sequestered in an adjacent room or behind a screen or mirror that permits the defendant to see and hear the child while the child testifies, but does not permit the child to see and hear the defendant.

"(D) The judge shall preside at the deposition as if at trial, ruling on all objections according to the rules of evidence applicable in criminal cases.

"(E) Defense counsel may cross-examine the child as if the child were testifying in the courtroom.

"(F) The court shall ensure that the defendant and defense counsel can communicate with each other while the child is testifying.

"(G) Persons operating the videotape equipment shall do so, where practical, in an adjacent or nearby room or behind a screen or mirror that permits them to see and hear the child during the testimony, but which prevents the child from seeing and hearing them.

"(H) The videotaped deposition shall be admissible at trial in lieu of the child's in-court testimony, upon a finding by the court on the record that the child remains unavailable.

"(I) The court shall ensure that the videotape is both visual and aural, the videotape equipment was capable of making an accurate recording, the equipment operator was competent, the videotape was accurate and was not altered, that each participant was identified, and that the defense and prosecution were afforded an opportunity to view the videotape and review a written transcript of it before it is shown in the courtroom.

"(J) All videotapes made pursuant to this subdivision [(a)(3)] shall be subject to any court order to protect the child's privacy. The videotape shall be destroyed 5 years from the date on which the trial court entered its judgment, but not before the final judgment is entered on appeal. The videotape shall become part of the court record and be kept by the court until such time as it is destroyed.

"(b) EVIDENCE.--

"(1) ADMISSIBILITY OF CHILD'S OUT-OF-COURT STATEMENTS.--A

statement made by a child describing any act of child physical abuse, sexual abuse or exploitation, not otherwise admissible by statute or court rule, is admissible if:

"(A) the court finds, in a hearing outside the presence of the jury, that the time, content and circumstances of the statement provide sufficient indicia of reliability; and,

"(B) the child either testifies at the proceedings or is unavailable to testify as a witness: *Provided*, That when the child is unavailable as a witness the statement may only be admitted if there is corroborative evidence of the act or statement. Unavailability includes a finding that the child is incompetent to testify at trial.

A statement may not be admitted under this subdivision [(b)(1)] unless the proponent of the statement makes known to the adverse party the intention to offer the statement and the particulars of the statement, sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

"(c) TESTIMONIAL AIDS.--The court may permit the child to use anatomical dolls, puppets, drawings, mannequins, or any other device it deems appropriate for the purpose of assisting the child in testifying.

"(d) PRIVACY/ADDRESS PROTECTION.--The name of, or other identifying information about, the child shall not be released to the public except as authorized by the court. The name and any identifying information shall not appear in the information, indictment, or any other public record.

Instead a non-descriptive designation shall appear in all public records. A violation of this section is a Class A misdemeanor. This provision does not prevent the release of such information to the accused or the accused's counsel.

"(e) USE OF MULTIDISCIPLINARY CHILD ABUSE TEAMS.--The non-disclosure requirements of subsection (d) shall not impede the efforts of multidisciplinary child abuse teams or others mandated to investigate allegations of abuse.

"(f) CLOSING THE COURTROOM.--When the child testifies the court may exclude from the courtroom all persons, including the media, who do not have a direct interest in the case. This procedure may only be used if the court determines on the record that the child's testimony under traditional courtroom procedures would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate, and the closure is narrowly tailored to serve the government's specific compelling interest.

"(g) EXTENSION OF THE STATUTE OF LIMITATIONS.--There is no limitation of time within which a prosecution must be commenced for any felony child physical abuse, sexual abuse, or exploitation offense.

"(h) GUARDIAN AD LITEM.--The court may appoint a guardian *ad litem* to protect the best interests of the child at any time during the proceedings. In making the appointment, the court shall consider the person's background in, and familiarity with, the judicial process, social service programs and child abuse issues. The guardian shall not be a person who is or may be a witness in any proceeding associated with the

alleged offense. The guardian may attend all depositions, hearings and trial proceedings, and make recommendations to the court. The guardian may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. The guardian shall marshal and coordinate the delivery of available resources and special services to the child. The guardian shall not be compelled to testify in any court action or proceeding about any information or opinion received from or about the child in the course of serving as a guardian. The guardian shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with his/her lawful duties.

"(i) CHILD ATTENDANT.--A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult who will provide emotional support to the child. This person may be placed side by side with the child at the discretion of the court. The person shall not provide the child with an answer to any question.

"(j) SPEEDY TRIAL.--The judge shall, consistent with the Federal Rules of Criminal Procedure, expedite the action and the action shall take precedence over any other prosecution. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of his/her involvement. In cases in which a judge is deciding whether to grant a continuance, the judge shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court must make written findings of facts and conclusions of law when granting a continuance.

TITLE III - CHILD CARE WORKER EMPLOYEE BACKGROUND CHECK

SEC. 301. CHILD CARE WORKER EMPLOYEE BACKGROUND CHECK.

Each agency of the Federal Government hiring individuals in the educational, correctional, child abuse investigation, child-caring, child-placing, and other fields determined to have supervisory or disciplinary authority over children, shall require a report of the criminal history of specified employees.

SEVERABILITY.

If any provision of this bill is held invalid this invalidity does not affect other provisions or applications. To this end the provisions of this law are severable.

AMERICAN PROSECUTORS RESEARCH INSTITUTE'S
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NEW SECTION ON COMPETENCY HEARINGS

"(k) COMPETENCY EXAMINATIONS.--

"(1) Nothing in this section shall be construed to abrogate FRE 601.

"(2) Competency hearings regarding child witnesses may be conducted by the court only upon written motion and offer of proof by a party.

"(3) This hearing may only be conducted if the court determines, on the record, that compelling reasons exist. The child's age alone is not a compelling reason.

"(4) Only the judge, prosecutor, defense attorney, court reporter, and person(s) whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child, may be present at the hearing.

"(5) The hearing shall be conducted out of the sight and hearing of the jury.

"(6) The prosecutor shall question the child, or may request the judge to question the child.

"(7) The questions asked shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

"(8) Psychological and psychiatric examinations to assess the competency of child witnesses shall not be ordered by the court without a showing of compelling need."