

1 HB75  
2 202881-1  
3 By Representatives Baker and Collins  
4 RFD: Judiciary  
5 First Read: 04-FEB-20  
6 PFD: 02/03/2020

SYNOPSIS: Existing law provides for the recording of videotaped depositions in criminal prosecutions for physical or sexual abuse or exploitation of children under the age of 16.

This bill would remove and update outdated references to videotape from statutory requirements for the recording of video depositions in criminal prosecutions for physical or sexual abuse or exploitation of children under the age of 16.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to depositions; to amend Section 15-25-2, Code of Alabama 1975; to remove and update outdated references to videotape from statutory requirements for the recording of video depositions in criminal prosecutions for physical or sexual abuse or exploitation of children under the age of 16.  
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) 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 ~~videotaped~~  
8 video deposition of an alleged victim of or witness to the  
9 crime who is under the age of 16 at the time of the order.

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

17           "(c) During the ~~taping~~ recording of a ~~videotaped~~  
18 video deposition authorized pursuant to this section, the  
19 following persons shall be in the room with the child: ~~The~~ the  
20 prosecuting attorney, the attorney for the defendant, and a  
21 person whose presence, in the judgment of the court,  
22 contributes to the well-being of the child and who has dealt  
23 with the child in a therapeutic setting regarding the abuse.  
24 Additional persons, ~~such as the parent or parents or legal~~  
25 ~~guardian,~~ other than the defendant, may be admitted into the  
26 room in the discretion of the court.

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

17                 "(e) For the purposes of this section, "~~videotaped~~  
18                 video deposition" means the ~~visual~~ recording ~~on a magnetic~~  
19                 ~~tape, together with the associated sound of a~~ video, with  
20                 sound, of witness ~~testifying~~ testimony made under oath to be  
21                 entered in the record in a judicial proceeding.

22                 "(f) The Supreme Court may adopt rules of procedure  
23                 regarding the taking and use of ~~videotaped~~ video depositions  
24                 in criminal proceedings and juvenile cases, as well as ~~for the~~  
25                 ~~transcribing of such~~ transcription of video depositions in ~~the~~  
26                 ~~event the case is thereafter appealed~~ appeals of those cases.

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

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

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

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

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

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