CHAPTER 12.1-35
CHILD VICTIM AND WITNESS FAIR TREATMENT STANDARDS

12.1-35-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Child" means an individual under the age of eighteen years.
2. "Child development specialist" means an individual who demonstrates educational and work experience exhibiting an understanding of child development and behavior.
3. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
4. "Family member" means a spouse, child, sibling, parent, legal guardian, or custodian of a victim.
5. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
6. "Sex offense" includes all sex offenses defined as such in chapter 12.1-20.
7. "Victim" means a living child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.
8. "Witness" means any living child who has been or is expected to be summoned to testify in a criminal case whether or not any action or proceeding has been commenced.

12.1-35-02. Additional services.

In addition to all rights afforded to victims and witnesses by law, state's attorneys are encouraged to provide the following additional services to children who are involved in criminal proceedings as victims or witnesses:

1. Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
2. Advice to the court concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
3. Information about, and referrals to, appropriate social services programs to assist the child and the child's family members in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.
4. Information about the availability of a child development specialist to ensure questions asked of the witness are chronologically and developmentally appropriate.

12.1-35-03. Information about child victims or witnesses of crimes generally may not appear in public record.

1. In order to protect the child from possible trauma resulting from publicity, the name of the child victim or witness of a crime, except as specified in subsection 2, and identifying biographical information may not appear on the indictment or any other public record. Instead, a Jane Doe or Joe Doe designation must appear in all public records. Sealed confidential records containing the child's name and necessary biographical information must be kept in order to ensure that no defendant is charged twice.
2. Subsection 1 does not apply to the name and identifying biographical information of:
   a. A child victim or witness of a criminal offense under title 39 or equivalent ordinance; and
   b. A child victim of a fire.

12.1-35-04. Limits on interviews and testimony.

The prosecuting attorney, the court, and appropriate law enforcement personnel, to the extent possible, shall protect the victim or witness from the psychological damage of repeated or lengthy interview, testimony, or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.

12.1-35-05. Prompt disposition.

In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the state's attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

12.1-35-05.1. Assistance during proceedings.

Upon request of a witness who is under the age of fourteen, the court shall permit an individual selected by the court to sit with, accompany, or be in close proximity to the witness in order to provide support to the witness while that witness is giving testimony. In order to provide support to a witness who is fourteen years of age or older, while that witness is giving testimony, the court may permit an individual selected by the court to sit with, accompany, or be in close proximity to that witness.

12.1-35-05.2. Confidentiality of testimony.

In any criminal proceeding in which the defendant is charged with a violation of chapter 12.1-20 involving a child, the court, upon the motion of the prosecuting attorney, shall conduct a hearing to determine whether the testimony of and relating to a child may be closed to the public in order to protect the child's reputation. In making the determination to close the proceedings, the court shall consider:

1. The nature and seriousness of the offense;
2. The age of the child;
3. The extent to which the size of the community would preclude the anonymity of the victim;
4. The likelihood of public opprobrium due to the status of the victim;
5. Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during the proceeding and that the disclosure would cause serious harm to the witness;
6. Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means; and
7. Any other factor the court may find necessary to protect the interests of justice.

12.1-35-05.3. Application to discovery proceedings.

This chapter applies to any criminal proceeding, including a deposition or other discovery proceeding.

12.1-35-06. Cause of action for damages and injunctive relief.

Nothing in this chapter may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a child victim or witness under this chapter is not grounds for the defendant to seek to have the conviction or sentence set aside. This chapter does not limit any rights to which child victims and witnesses of crime are otherwise entitled.