CHAPTER 31-04
GENERAL PROVISIONS

31-04-01. Methods of taking testimony of witnesses.
Testimony of witnesses may be taken by:
1. Affidavit.
2. Deposition.
3. Oral examination.

31-04-02. Affidavit defined.
An affidavit is a written declaration under oath made without notice to the adverse party.

31-04-03. Deposition defined.
A deposition is a written declaration under oath made upon notice to the adverse party for the purpose of enabling the adverse party to attend and cross-examine, or upon written interrogatories.

31-04-04. Oral examination defined.
An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

31-04-04.1. Videotaped statement of child sexual offense victim - Criteria for admission as evidence.
1. In any prosecution for a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11 in which the victim is less than fifteen years of age, the oral statement of the child victim may be recorded before trial and, subject to subsection 2, is admissible as evidence in any court proceeding regarding the offense if the following conditions are satisfied:
   a. The court determines there is reasonable cause to believe that the child victim would experience serious emotional trauma as a result of in-court participation in the proceeding;
   b. The accused must be given reasonable written notice of the time and place for taking the videotaped statement;
   c. The accused must be afforded the opportunity to hear and view the testimony from outside the presence of the child by means of a two-way mirror or other similar method that will ensure that the child cannot hear or see the accused;
   d. The accused must have the opportunity to communicate orally with counsel by electronic means while the videotaped statement is being made; and
   e. All questioning must be done by the prosecutor or counsel for the defendant unless the defendant is an attorney pro se. An attorney pro se must conduct all questioning from outside the presence of the child. Upon request of any of the parties or upon the determination of the court that it would be appropriate, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting to aid the court throughout proceedings conducted under this section and the court may appoint a guardian ad litem to protect the interests of the child.
2. A child victim's videotaped statement is admissible pursuant to subsection 1 if the court finds that the child is unavailable as a witness to testify at trial and, upon viewing the videotape recording before it is shown to the jury, determines that it is sufficiently reliable and trustworthy and that the interests of justice will best be served by admission of the statement into evidence. For purposes of this subsection, "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or psychological strain if

required to testify at trial. The court, in making its findings and determinations under this subsection, shall consider at least the following:

a. The nature of the offense;
b. The significance of the child's testimony to the case;
c. The child's age;
d. The child's psychological maturity and understanding; and
e. The nature, degree, and duration of potential injury to the child from testifying.

31-04-05. Use of affidavits.

An affidavit may be used:

1. To verify a pleading.
2. To prove the service of a summons, notice, or other process in an action.
3. To obtain a provisional remedy.
4. To obtain an examination of a witness.
5. To obtain a stay of proceedings.
6. Upon a motion.
7. In any other case permitted by law.

31-04-06. How proof of publication made.

Proof of the publication of a document or notice required by law or by court order to be published in a newspaper may be made by the affidavit of the publisher of the newspaper, or the publisher's designee, annexed to a copy of the document or notice, specifying the paper in which and the times when the publication was made.

31-04-07. Where and how affidavits may be made.

An affidavit may be made in or out of this state before any person authorized to administer an oath.

31-04-08. Procedure for securing affidavit of person refusing to make the same.

When any party intends to make or oppose a motion in any court and it shall be necessary for the party to have the affidavit of any person who shall have refused to make the same, such court, by order, may appoint a referee to take the affidavit or deposition of such person. Such person may be subpoenaed and compelled to attend and make an affidavit before such referee the same as before a referee to whom an action is referred to try an issue, and the fees of such referee for such service shall be three dollars per day.

31-04-09. No title required to affidavits.

It shall not be necessary to entitle an affidavit in the action, but an affidavit made without a title or with a defective title shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refers to the action or proceeding in which it is made.

31-04-10. Form and contents of certificate for certifying copies to be used as evidence.

Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there is any, or if such officer is a clerk of a court having a seal, under the seal of such court.

31-04-11. Mediation - Inadmissibility of evidence - Exception.

When persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute, evidence of anything said or of any admission made in the course of the mediation is inadmissible as evidence and disclosure may not be compelled in any subsequent civil proceeding except as provided in this section. This section does not limit the compulsion nor the admissibility of evidence if:

1. The evidence relates to a crime, civil fraud, or a violation under the Uniform Juvenile Court Act;
2. The evidence relates to a breach of duty by the mediator;
3. The validity of the mediated agreement is in issue; or
4. All persons who conducted or otherwise participated in the mediation consent to disclosure.

31-04-12. Expressions of empathy.

1. A statement, affirmation, gesture, or conduct of a health care provider, or health care provider's employee or agent, which expresses apology, sympathy, commiseration, condolence, compassion, or benevolence to a patient or to a patient's relative or representative is not admissible as evidence of liability or as an admission against interest in a civil action, arbitration proceeding, or administrative hearing regarding the health care provider.
2. For purposes of this section, unless the context otherwise requires:
   a. "Health care provider" means:
      (1) An individual licensed or certified by the state to deliver health care;
      (2) A hospital or clinic, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility, or a professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state; and
      (3) A nursing, basic, or assisted living facility licensed by this state or by any other health care organization.
   b. "Relative" means an individual who has a relationship to the patient by marriage, blood, or adoption.
   c. "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a health care directive, or any person recognized in law or custom as a patient's agent.