

SENATE BILL 312

By Black

AN ACT to amend Tennessee Code Annotated, Title 24,
relative to evidence and witnesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by
adding the following as a new section:

Section 24-7-123.

(a) Notwithstanding any provision of this part to the contrary, a
videotaped statement made by a child under thirteen (13) years of age describing
any act of sexual contact or physical abuse performed with or on the child by
another is admissible in evidence if the child is available to testify or is
determined by the court to be unavailable in the proceedings and the court finds
that the circumstances of the statement provide sufficient indicia of reliability as
follows:

(1) The court finds in a hearing conducted outside the presence
of the jury or before a hearing on the charged offense in juvenile court,
that the time, content, and circumstances of the statement provide
sufficient safeguards of reliability. In making its determination, the court
may consider the mental and physical age and maturity of the child, the
nature and duration of the abuse or offense, the relationship of the child
to the offender, the reliability of the assertion, the reliability of the child
victim, and any other factor deemed appropriate; and

(2) The child either:

(A) Testifies or is available to be called as a witness by either party; or

(B) Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense.

Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm.

(b) In each criminal action or juvenile proceeding the defendant shall be notified no later than ten (10) days before trial that a statement which qualifies pursuant to this section will be offered as evidence at trial. The notice shall include a written statement of the content of the child's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.

(c) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

SECTION 2. This act shall take effect January 1, 2009, the public welfare requiring it.