

HOUSE BILL 400

By Halford

AN ACT to amend Tennessee Code Annotated, Title 39
and Title 40, relative to criminal law and criminal
procedure.

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

SECTION 1. Tennessee Code Annotated, Section 40-17-105, is amended by designating the existing language as subsection (a) and by adding the following new subsections:

(b) When the trial judge determines that a witness who has not testified in a prior proceeding is unavailable under the rules of evidence, or the witness is deployed pursuant to orders of the governor of this state or of the president of the United States, or due to any other reason for which the trial judge determines good cause exists to excuse the witness from personally appearing before the court for the purpose of giving of testimony, the testimony of the witness may be presented in court by the following methods:

(1) By previously recorded testimony, if the trial judge finds the following:

(A) The recorded testimony consists of a video recording and the accused was present with counsel in the presence of the judge while the testimony was being recorded;

(B) The recording accurately reflects that both the witness and the accused were able to view and hear each other during the testimony;
and

(C) The recorded testimony sufficiently enables the judge or jury to observe the witness during the testimony; or

(2) By live video transmission during the trial, if the trial judge finds the following:

(A) The testimony is transmitted in such a manner that the witness and the accused can see and hear each other during testimony;

(B) The video transmission sufficiently enables the judge or jury to observe the witness during the testimony; and

(C) An accurate record is created that the witness and accused were face to face during the video-transmitted testimony.

(c) When a party seeks to use video-recorded or live-transmitted testimony in lieu of the personal appearance of a witness, the trial judge shall authorize the use of the procedure. The judge shall make specific findings before recorded or transmitted testimony may be admitted at a hearing or trial. The judge shall find the following:

(1)

(A) That the witness is unavailable under the rules of evidence;

(B) That the witness has been deployed as the result of orders issued by the governor of this state or the president of the United States and is not subject to the subpoena powers of the court; or

(C) For any other reason determined by the trial judge to be in the interests of justice or constitute good cause;

(2) That the witness is under oath and is competent to testify;

(3) That the testimony can be sufficiently recorded or transmitted at a hearing or trial so that the judge and jury can sufficiently observe the witness during the testimony;

(4) That the testimony is recorded or transmitted so that the witness and the accused can view each other during the testimony;

(5) That the video recording or transmission allows for a full and fair opportunity for cross-examination; and

(6) Any other factor that the trial judge determines is relevant to ensure that the provisions of subsection (a) are satisfied.

SECTION 2. This act shall take effect July 1, 2015, the public welfare requiring it.