

1 **OVERTURE 2021-40 (48th GA)** from Tennessee Valley Presbytery (to 49th OC)  
2 “Amend *BCO* 32-13 and 35-5 to Allow Victim Protection Provisions  
3

4 **[Editorial Note: This overture was originally submitted to the 48th General**  
5 **Assembly (2021), which “committed” it “to the 49th GA OC in Birmingham,**  
6 **and in the interim” referred it “to the Ad Interim Committee on Abuse...for**  
7 **them to give advice to the 49th GA OC.”]**  
8

9 **Whereas**, when this Overture was filed, it was our understanding these proposals were  
10 endorsed by the Ad Interim Committee on Domestic Abuse and Sexual Assault. See  
11 the AIC Report for any comments.  
12

13 **Whereas**, these changes are needed to protect victims of abuse during judicial process. As the  
14 *BCO* sections now stand, a victim of abuse is given the right to be cross-examined by  
15 the accused. That means any of the following examples are possible.  
16

- 17 • A teenage girl who was raped by a church staff member is cross-examined  
18 by the man who raped her.
- 19 • Someone who was emotionally and/or physically abused is cross-  
20 examined by the abuser.
- 21 • A young child who was sexually abused is cross-examined by the  
22 predator.  
23

24 The current provision of cross-examination by the accused in these sorts of cases  
25 greatly increases the risk of an abused person being unwilling to participate in a case  
26 of process, and also opens the door to further trauma. There is no scriptural mandate  
27 for such a right of confrontation. The only situation in which such a right was invoked  
28 was the example of Paul asserting that right as a Roman citizen (Acts 25:16).  
29

30 **Whereas**, the right afforded the accused to cross-examine his accuser has a long history  
31 in the Presbyterian Church, dating back to at least 1858. This right of confrontation  
32 reflects civil law embedded in the 6th amendment to the U.S. Constitution, ratified  
33 in 1791. The 6th amendment grants the accused the right “to be confronted with  
34 the witnesses against him.” In 1808, Chief Justice John Marshall famously stated  
35 of the Confrontation Clause: “I know of no principle in the preservation of which  
36 all are more concerned. I know none, by undermining which, life, liberty and  
37 property, might be more endangered. It is therefore incumbent on courts to be  
38 watchful of every inroad on a principle so truly important.” This opinion  
39 notwithstanding, it is of note that the Supreme Court has wrestled with the right  
40 of confrontation and has been willing to recognize the need for some protection of  
41 some accusers, particularly in cases involving minors.

1 For example, in *Maryland v. Craig* (1990), the Court allowed a state to utilize a one-  
2 way closed circuit television procedure for the receipt of testimony by a six-year-old  
3 victim in an abuse case.<sup>1</sup>  
4

5 **Whereas**, our *BCO* has not wrestled with the possibility of reasonable limits to the right of  
6 confrontation. Our ecclesiastic law should incorporate reasonable protections for  
7 minors and abuse victims, while at the same time protecting the rights of the accused  
8 to know and “confront” his accuser. In fact, we believe that the Church should be more  
9 protective of those entrusted to its care than the state.  
10

11 **Whereas**, as the *BCO* currently stands, if a church court allowed an alleged child-abuse victim  
12 to testify by Zoom, the accused might have grounds for appeal, alleging the court  
13 violated his *BCO* 32-13 right to “examine” all witnesses “in his presence” even if  
14 defense counsel cross-examined the witness over Zoom.  
15

16 **Whereas**, we urge that some accommodation be made for victim testimony in cases alleging  
17 child abuse, domestic abuse, sexual abuse, or sexual assault, to allow the court to make  
18 reasonable accommodations to shield accusers from face-to-face contact with the  
19 accused.  
20

21 **Therefore, be it resolved** that *BCO* 32-13, 35-1 and 35-5 be amended by adding, to each, the  
22 four-sentence paragraphs underlined below.  
23

24 *BCO* 32-13. In order that the trial may be fair and impartial, the witnesses  
25 shall be examined in the presence of the accused, or at least after he shall  
26 have received due citation to attend. Witnesses may be cross-examined by  
27 both parties, and any questions asked must be pertinent to the issue.

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<sup>1</sup> In *Maryland v. Craig*, in a 5-4 decision written by O’Connor, the Court held as follows: “The Confrontation Clause does not guarantee criminal defendants an *absolute* right to a face-to-face meeting with the witnesses against them at trial. The Clause’s central purpose, to ensure the reliability of the evidence against a defendant by subjecting it to rigorous testing in an adversary proceeding before the trier of fact, is served by the combined effects of the elements of confrontation: physical presence, oath, cross-examination, and observation of demeanor by the trier of fact. Although face-to-face confrontation forms the core of the Clause’s values, it is not an indispensable element of the confrontation right. If it were, the Clause would abrogate virtually every hearsay exception, a result long rejected as unintended and too extreme, *Ohio v. Roberts*, 448 U.S. 56, 63. Accordingly, the Clause must be interpreted in a manner sensitive to its purpose and to the necessities of trial and the adversary process. See, e.g., *Kirby v. United States*, 174 U.S. 470. Nonetheless, the right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the testimony’s reliability is otherwise assured. *Coy, supra*, at 1021. Pp. 5-11.” <https://www.law.cornell.edu/supct/html/89-478.ZS.html>

See also Scalia’s Dissenting Opinion, joined by Brennan, Marshall and Stevens. In sum, Scalia contended the 6<sup>th</sup> Amendment to the Constitution would need to be amended in order for Maryland to do what it did, because the 6<sup>th</sup> Amendment clearly says, “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him ...” <https://www.law.cornell.edu/supct/html/89-478.ZD.html> Scalia’s objection wasn’t to the fairness issue, but rather, he was sticking to the letter of the law. This Overture seeks to change the law, so, Scalia’s argument would not apply to the proposed revision.

1           However, throughout the trial in cases involving alleged child abuse,  
2           domestic abuse, sexual abuse, or sexual assault, a court may make reasonable  
3           accommodations to shield accusers from face-to-face contact with the  
4           accused. This can be done upon request by the accuser or when the court  
5           determines that such accommodation is necessary. Such accommodations  
6           might include procedures such as written testimony or videoconferencing  
7           testimony, in which a reasonable path for cross-examination is provided.  
8           The court shall include in the record its reasons for any accommodations  
9           and any objection from the accused to such accommodation, and the  
10           objection and the court’s response shall be included in the record.

11  
12           **BCO 35-1.** All persons of proper age and intelligence are competent  
13           witnesses, except such as do not believe in the existence of God, or a future  
14           state of rewards and punishments. The accused party may be allowed, but  
15           shall not be compelled to testify; but the accuser shall be required to testify,  
16           on the demand of the accused. Either party has the right to challenge a  
17           witness whom he believes to be incompetent, and the court shall examine  
18           and decide upon his competency. It belongs to the court to judge the degree  
19           of credibility to be attached to all evidence.

20           Throughout the trial in cases involving alleged child abuse, domestic  
21           abuse, sexual abuse, or sexual assault, a court may make reasonable  
22           accommodations to shield accusers from face-to-face contact with the  
23           accused. This can be done upon request by the accuser or when the court  
24           determines that such accommodation is necessary. Such accommodations  
25           might include procedures such as written testimony or videoconferencing  
26           testimony, in which a reasonable path for cross-examination is provided.  
27           The court shall include in the record its reasons for any accommodations  
28           and any objection from the accused to such accommodation, and the  
29           objection and the court’s response shall be included in the record.

30  
31           **BCO 35-5.** Witnesses shall be examined first by the party introducing them;  
32           then cross-examined by the opposite party; after which any member of the  
33           court, or either party, may put additional interrogatories. No question shall  
34           be put or answered except by permission of the moderator, subject to an  
35           appeal to the court. The court shall not permit questions frivolous or  
36           irrelevant to the charge at issue.

37           Throughout the trial in cases involving alleged child abuse, domestic  
38           abuse, sexual abuse, or sexual assault, a court may make reasonable  
39           accommodations to shield accusers from face-to-face contact with the  
40           accused. This can be done upon request by the accuser or when the court  
41           determines that such accommodation is necessary. Such accommodations  
42           might include procedures such as written testimony or videoconferencing  
43           testimony, in which a reasonable path for cross-examination is provided.  
44           The court shall include in the record its reasons for any accommodations

1                   and any objection from the accused to such accommodation, and the  
2                   objection and the court's response shall be included in the record.

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4   *Adopted by Tennessee Valley Presbytery at its stated meeting, April 17, 2021*

5   *Attested by /s /TE Jacob A. Bennett, stated clerk*