
Judiciary Committee

HB 3072

Title: An act relating to child witnesses.

Brief Description: Providing for child witnesses.

Sponsors: Representatives Rodne and Woods.

Brief Summary of Bill

- Expands the allowed use of one-way, closed-circuit television for taking the testimony of a child witness under the age of 10 outside the presence of the defendant in criminal prosecutions;
- Allows such testimony of a child witness to be so taken with respect to sexual contact or physical abuse against a child other than the witness; and
- Allows such testimony of a child witness to be so taken with respect to a violent offense committed against a person known by or familiar to the child witness.

Hearing Date: 2/12/04

Staff: Bill Perry (786-7123).

Background:

The State and Federal Constitutions contain guarantees of an accused person's right "to be confronted with" or "to meet face to face" the witnesses against him or her. Both federal and state courts have allowed a departure from an absolute right of confrontation in certain cases involving child witnesses. A Washington statute allowing the use of closed-circuit television to take child testimony out of the presence of the defendant in cases involving sexual contact or physical abuse has been upheld by the state supreme court as not violative of Article I, Section 22 of the State Constitution (*State v. Foster*, 135 Wn.2d 441 (1998)). A similar statute has been upheld by the U.S. Supreme Court as consistent with the Sixth Amendment to the Federal Constitution (*Maryland v. Craig*, 497 U.S. 836 (1990)).

The Washington statute provides that in cases involving sexual contact or physical abuse where the victim is a child under 10, the court may, under certain circumstances, allow the child to testify outside the presence of the defendant and the jury via closed circuit television. The testimony to be allowed is the child victim's description of the act of sexual contact or physical abuse.

The court may allow the child victim to so testify outside the presence of the defendant if it makes certain findings in a hearing conducted outside the presence of the jury. The court must find that requiring the child to testify in front of the defendant would cause the child to suffer such serious emotional or mental distress as to make the child be unable to communicate reasonably at the trial.

If the defendant is to be separated from the child victim at trial then the jury must also be separated from the child. However, a court may allow a child to testify outside the presence of the jury, but in the presence of the defendant. To allow separation from the jury, the court must find that requiring the child to testify in front of the jury will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at trial or, even if the child can communicate, that the child will be traumatized.

The court must balance the strength of the state's case without the testimony of the child victim against the defendant's constitutional rights. The court must also determine if a less-restrictive alternative exists to protect the child.

The court must also find that the prosecutor has made all reasonable efforts to prepare the child for testifying, such as giving the child court tours and informing the child's guardians about counseling services. If the prosecutor did not make those efforts, the court must deny the motion.

The court must conduct a hearing before trial to determine whether the presence of the defendant or the jury is the source of the child victim's likely trauma, and must limit the use of the closed-circuit television at trial accordingly. If the prosecutor alleges and the court concurs that the defendant's presence is probably the source of the trauma, then at the pre-trial hearing the court may conduct the examination of the child outside the presence of the defendant by using the closed circuit television.

The prosecutor, defense attorney, and any neutral and trained victim's advocate assigned to the child must always be in the room with the child when closed-circuit television is used. All the parties in the room with the child must be on television if possible, otherwise the court must describe for the viewers the location of the parties in relation to the child. The defendant must be allowed constant communication with the defense attorney and must be allowed reasonable court recesses to consult directly with his or her attorney.

The use of closed-circuit television is not available if the defendant is acting as his or her own attorney. Closed-circuit television may not be used to separate the witness from the defendant regarding a legitimate question of identifying the defendant.

Summary of Bill:

The allowed use of closed-circuit television to take child witness testimony that describes certain acts is expanded in two ways:

First, testimony may be taken from a child under the age of 10 who is a witness, but not necessarily a victim, with respect to describing acts of sexual contact or physical abuse involving another child of any age.

Second, testimony may be taken from a child witness under the age of 10 with respect to describing acts that constitute a "violent offense" against any person of age who is known by or

familiar to the child witness. Violent offenses include any class A felony and any attempt, solicitation or conspiracy to commit a class A felony. Violent offenses also include the following class B felonies:

- Manslaughter in the second degree;
- Kidnapping in the second degree;
- Arson in the second degree;
- Assault in the second degree;
- Assault of a child in the second degree;
- Extortion in the first degree;
- Robbery in the second degree;
- Drive-by Shooting; and
- Vehicular assault committed while under the influence of alcohol or drugs.

A provision is added stating that nothing in the statute on closed-circuit television testimony precludes a court from allowing a child to so testify under circumstances other than those described in the statute.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.