

HOUSE BILL REPORT

HB 1837

As Passed House:

March 8, 2005

Title: An act relating to child witnesses.

Brief Description: Providing for child witnesses.

Sponsors: By Representatives Rodne, Lantz, McDonald, Moeller, Dickerson, Priest, Curtis, Morris, Woods, Shabro, Hasegawa, Kagi and Kenney.

Brief History:

Committee Activity:

Judiciary: 2/22/05, 2/25/05 [DP].

Floor Activity:

Passed House: 3/8/05, 98-0.

Brief Summary of Bill

- Expands the statute allowing child victims to testify via closed-circuit television to include child witnesses who are not victims under certain circumstances.
- Provides that the court is not prohibited from allowing child testimony via closed-circuit television under other circumstances the court finds appropriate.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Edie Adams (786-7180).

Background:

Child Testimony by Closed-Circuit Television

In 1990, the Legislature passed a statute authorizing the testimony of child witnesses to be taken outside the presence of the defendant via closed-circuit television under certain circumstances. Use of closed-circuit television for child victim testimony is available if:

- the child is under the age of 10;
- the case involves sexual or physical abuse of the child; and

- the court finds that requiring the child to testify in front of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial.

In addition, a number of other requirements must be met in order for the court to allow a child to testify via closed-circuit television. The court must find that the prosecutor made all reasonable efforts to prepare the child for testifying, such as counseling, court tours, and explaining the trial process. The court must balance the strength of the state's case without the testimony of the child against the defendant's constitutional rights. The court must also determine if a less-restrictive alternative exists to protect the child from the emotional distress of testifying.

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

If the court allows child testimony via closed-circuit television, the prosecutor, defense attorney, and a neutral and trained victim's advocate must always be in the room with the child when closed-circuit television is used. The court may decide to remain in the room with the child or to preside over the courtroom. The defendant must be able to communicate constantly with the defense attorney during the testimony and has the right to recesses in order to consult with the defense attorney. 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.

This option of using closed-circuit television is not available in cases where the defendant is acting as his or her own attorney or when identification of the defendant is an issue.

Right to Confrontation

Both the state and federal constitutions provide an accused criminal defendant the right to confront the witnesses against him or her. Article II, section 22 of the Washington Constitution provides that "an accused shall have the right . . . to meet the witnesses against him face to face." The Sixth Amendment to the United States Constitution provides that "the accused shall enjoy the right . . . to be confronted with the witnesses against him."

In a 1998 decision, *State v. Foster*, the Washington Supreme Court upheld the constitutionality of the child victim closed-circuit television testimony statute in light of the constitutional right to confrontation. The Court determined that, while the right to confrontation generally requires the physical presence of the witness in the courtroom, this right is not absolute. The right of physical presence may be dispensed with only if it is necessary to further an important public policy and the reliability of the testimony is otherwise assured.

The Court held that the child victim closed-circuit testimony statute meets this test. The Court found that the purpose of protecting child abuse victims from the emotional trauma of testifying in the presence of the defendant is a sufficiently important public policy. In addition, the Court found that the procedure adequately ensures the reliability of the child's testimony because the child must be competent and testify under oath, is subject to cross-examination, and is visible so that the jury may see the child's demeanor during testimony.

Summary of Bill:

The statute authorizing testimony by a child victim to be given via closed-circuit television outside of the presence of the defendant is expanded to include testimony by a child witness who is not the victim of the crime when the testimony describes:

- sexual or physical abuse of another child by another person; or
- a violent offense committed by or against a person known by and familiar to the child witness.

In addition, the statute is amended to provide that the provisions of the closed-circuit television testimony statute do not prohibit the court from allowing a child to testify outside the presence of the defendant and the jury via closed-circuit television under other circumstances the court finds appropriate.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill was brought forward by child advocates and some council members and superior court judges in King County. The underlying statute that allows the use of closed-circuit television for testimony of child victims should be extended to child witnesses of violent crimes. The extension is supported on the same rationale that in-court testimony, particularly in the domestic violence context, can be extremely traumatic for young children. The underlying statute's constitutionality has been upheld.

Testimony Against: None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.