

SENATE BILL REPORT

HB 1837

As Reported By Senate Committee On:
Judiciary, March 31, 2005

Title: An act relating to child witnesses.

Brief Description: Providing for child witnesses.

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

Brief History: Passed House: 3/08/05, 98-0.

Committee Activity: Judiciary: 3/29/05, 3/31/05 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Rasmussen and Thibaudeau.

Staff: Lilah Amos (786-7429)

Background: In 1990 the Legislature passed a statute authorizing the testimony of child witnesses to be taken at trial outside the presence of the defendant via closed-circuit television under certain circumstances. Closed-circuit television can be used for child victim testimony if:

- the child is under 10 years of age;
- sexual or physical abuse of the child is alleged;
- the court finds that requiring the child to testify in front of the defendant will cause serious emotional or mental distress that will prevent the child from reasonably communicating at the trial;
- the prosecutor has made all reasonable efforts to prepare the child for testifying, including informing the parents of community counseling services, giving court tours, and explaining the trial process;
- the court balances the strength of the state's case without the testimony of the child against the defendant's constitutional rights and degree of infringement of the closed-circuit television procedure on those rights; and
- no less restrictive method of obtaining testimony can adequately protect the child from serious emotional or mental distress.

At a pretrial hearing the court must determine whether the presence of the defendant or the jury is the source of distress to the child and must limit the use of the closed-circuit television accordingly. If the defendant's presence is the source of the trauma, at the hearing the court may conduct the examination of the child outside the presence of the defendant using closed-circuit television.

If the court allows child testimony via closed-circuit television, the prosecutor, defense counsel, and a neutral and trained victim's advocate must always be in the room with the child when the television is used. The court may be in the room with the child or may remain in the courtroom. The defendant must be able to communicate constantly with the defense attorney during the testimony and can have recesses to communicate with the defense attorney. All parties in the room with the child must be on television if possible. Use of closed-circuit television is not available if the defendant acts as his or her own attorney or when identification of the defendant is an issue.

Both the state and federal constitution provide a criminal defendant the right to confront the witnesses against the defendant. In 1998, the court in *State v. Foster* upheld the constitutionality of the child victim closed-circuit television testimony statute against a claim that the statute violated the defendant's right to confrontation. The court found that the right to confrontation is not absolute, and the court can dispense with the physical presence of the defendant only if necessary to further an important public policy and the reliability of the testimony is otherwise assured. The reliability of the child's testimony via closed-circuit television is adequately ensured because the court must still find the child competent to testify, the child is subject to cross-examination, and the jury can 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 the presence of the defendant is expanded to also allow testimony by a child witness who is not the victim of the crime. The testimony from the child witness must describe:

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

The court must use the same factors to determine if this procedure is necessary and to insure that the defendant's rights are protected. The statute is also amended to provide that the court can allow a child to testify outside the presence of the defendant and the jury via closed-circuit television under such other circumstances as the court deems appropriate.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill fills a gap in criminal law by providing to all child witnesses, not solely child victims, the protections afforded by allowing testimony via closed-circuit television. The bill is supported by judges, prosecutors, defenders, and child advocates. The bill is a common sense expansion of the current law, which has been used conservatively and only when necessary and appropriate. The current law is a narrowly drawn protection to prevent trauma to child victims under ten years of age.

Testimony Against: None.

Who Testified: PRO: Representative Rodne, prime sponsor; Suzanne Brown-McBride, Washington Coalition of Sexual Assault Programs.