

**Judiciary Committee**

**HB 1898**

**Title:** An act relating to protection of child victims.

**Brief Description:** Concerning awareness of the possibility of children testifying remotely in certain cases.

**Sponsors:** Representatives Ortiz-Self, Johnson, Walkinshaw, Muri, Robinson, Pettigrew, Lytton and Kilduff.

**Brief Summary of Bill**

- Includes in the statutory list of crime victims' rights, the right of certain child victims to be informed of the possibility that the court may allow their testimony from a room outside the presence of the defendant and jury.
- Requires the Criminal Justice Training Commission's annual training on investigating and prosecuting sexual assault cases to include a reference to the possibility of remote child testimony in certain cases.

**Hearing Date:** 2/11/15

**Staff:** Omeara Harrington (786-7136).

**Background:**

Child Testimony by Closed-Circuit Television.

On motion of the prosecuting attorney in a criminal proceeding, the court may allow a child witness to testify by closed-circuit television from a room outside the presence of the defendant and the jury. To allow testimony outside the presence of the defendant and the jury, the court must find by substantial evidence that requiring the child witness to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at trial. If the child is able to communicate in front of the defendant but not the jury, the defendant will remain in the room while the jury is excluded.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The option to testify by closed-circuit television is limited to cases in which the child witness is under the age of 14 and the testimony will describe:

- an act or attempted act of sexual contact or physical abuse involving the child;
- an act or attempted act of sexual contact or physical abuse by a person against another child;
- a trafficking or child sexual exploitation offense; or
- a violent offense committed against or by a person known or familiar to the child witness.

The court cannot permit child testimony by closed-circuit testimony unless there is no less restrictive method of obtaining the testimony that adequately protects the child from serious emotional or mental distress. The court must find that the prosecutor has made all reasonable efforts to prepare the child witness for testifying. Additionally, the court must balance the strength of the state's case without the testimony of the child witness against the defendant's constitutional rights.

If the court allows a child witness to testify outside the presence of the defendant, the defendant must be able to communicate constantly with the defense attorney. The prosecutor, defense attorney, and a victim's advocate, if any, must be in the room with the child-witness. The court may or may not be in the room with the child.

The option to allow a child witness to testify by closed-circuit television is not permitted if the defendant is acting as his or her own attorney, or when identification of the defendant is at issue.

#### Victim, Witness, and Survivor Rights.

The rights of crime victims are recognized in the Washington Constitution; additionally, under statute, a reasonable effort must be made to ensure that victims, survivors of victims, and witness of crimes have certain rights. Examples of these rights include, but are not limited to: receipt a written statement of crime victims' rights; notice of the final disposition of the case; protection from harm arising out of cooperation with law enforcement and prosecution efforts; if possible, provision of a secure waiting area during court proceedings; submission of a victim impact statement; with respect to victims of violent and sex crimes, the presence of a victim advocate during interviews and proceedings; and presence during trial.

#### Criminal Justice Training Commission Sexual Assault Investigation and Prosecution Training.

The Criminal Justice Training Commission (CJTC) provides basic law enforcement training and educational programs for law enforcement, corrections personnel, and other public safety professionals. The CJTC is required to offer a yearly intensive training session on investigating and prosecuting sexual assault cases. The training must take an integrated approach so that prosecutors, law enforcement, defenders, and victim advocates can benefit from the training.

#### **Summary of Bill:**

The Legislature finds that the statutory authority to allow certain child victims to testify by closed-circuit television helps protect those victims, as exposure of a child to his or her abuser may cause serious emotional and mental trauma and may inhibit the ability of the child to testify. However, the Legislature finds that the procedure to allow remote testimony in qualifying cases is rarely used, and intends to raise awareness of the procedure.

The list of victim, witness, and survivor rights includes a requirement that certain child victims are informed of the possibility that the court may allow children under the age of 14 to testify in a room outside the presence of the defendant and the jury.

The CJTC's annual training on investigating and prosecuting sexual assault cases must include a reference to the possibility that a court may allow certain children under the age of fourteen to testify in a room outside of the presence of the defendant and the jury.

**Appropriation:** None.

**Fiscal Note:** Requested on February 9, 2015.

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