

# HOUSE BILL REPORT

## SHB 1898

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### As Amended by the Senate

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

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

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Ortiz-Self, Johnson, Walkinshaw, Muri, Robinson, Pettigrew, Lytton and Kilduff).

**Brief History:**

**Committee Activity:**

Judiciary: 2/11/15, 2/19/15 [DPS].

**Floor Activity:**

Passed House: 3/2/15, 97-0.

Senate Amended.

Passed Senate: 4/13/15, 45-0.

### Brief Summary of Substitute Bill

- 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.
- Directs the Criminal Justice Training Commission to annually survey law enforcement and prosecuting agencies and report to the Legislature regarding the use of child remote-testimony process, and related matters.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Muri, Orwall, Stokesbary and Walkinshaw.

**Minority Report:** Do not pass. Signed by 1 member: Representative Klippert.

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

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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.*

## **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.

The court's ability to allow a child witness 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 television 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.

Child testimony 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.

### 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 Substitute 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 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 14 to testify in a room outside of the presence of the defendant and the jury.

In addition, the CJTC must survey law enforcement and prosecuting agencies on the following, and annually report to the Legislature starting December 1, 2015:

- the frequency of cases where children under the age of 14 elect not to testify, including the reasons for the election not to testify;
- the number of cases where the child remote testimony law was used, and whether those cases resulted in conviction; and
- the number of child sexual abuse cases referred for prosecution, and the number of those cases that were prosecuted.

#### **EFFECT OF SENATE AMENDMENT(S):**

The CJTC is required to report to the Legislature every other year, rather than annually, with the results of its survey regarding the use of the child remote-testimony process and related matters.

**Appropriation:** None.

**Fiscal Note:** Available.

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

#### **Staff Summary of Public Testimony:**

(In support) The ability of a court to allow remote testimony for some children is already in statute, but it is rarely used. This bill is simple. It brings public awareness of this process both to prosecutors in their curriculum and through victims' rights. Children have been badgered in testimony. There are many accounts of children being raked over the coals in court and re-traumatized by having to face their perpetrator in a room full of adults. Some children have declined to press charges because of fear of facing their perpetrator, resulting in that person never being prosecuted. The ability of a child to testify remotely enables some children to avoid having to relive their nightmare in a public way.

(With concerns) The statute that allows for closed circuit testimony requires that the trauma is so great it prevents the child from testifying. There is a federal and state constitutional right to confrontation, with the state clause referencing a face-to-face confrontation. The statute was challenged and upheld in 1998, but with a 4-1-4 opinion, in which four Justices would have overturned it. The State Supreme Court said, of confrontation, that any

encroachment should be rare, justified only when necessary on a case-by-case basis, and only used when it does not infringe on the truth seeking purpose of the constitutional right. That is clear instruction that this should not be used regularly, but only in desperation. This statute is rarely used because it is supposed to be rarely used. All victims, not just children, are scared to testify. It is necessary to be frank with children who are going to have to testify. It does damage to tell every child that they are not going to have to go through this very traumatic event and then not be able to deliver. It would be a mistake to tell children they do not have to testify, when typically they will have to.

(Opposed) None.

**Persons Testifying:** (In support) Representative Ortiz-Self, prime sponsor.

(With concerns) Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.