

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S3/17/97

A Bill

HOUSE BILL 1234

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5 By: Representatives Pollan and Flanagin
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For An Act To Be Entitled

8
9 "AN ACT TO PERMIT TESTIMONY OF A CHILD BY CLOSED CIRCUIT
10 TELEVISION IN A CRIMINAL PROCEEDING; AND FOR OTHER
11 PURPOSES."

Subtitle

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14 "TO PERMIT TESTIMONY OF A CHILD BY
15 CLOSED CIRCUIT TELEVISION IN A CRIMINAL
16 PROCEEDING."
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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20 SECTION 1. (a) In any criminal proceeding, on motion of the prosecutor
21 after notice to the defendant or on motion of the defense attorney, the court
22 may, upon a showing of clear and convincing evidence that testifying in open
23 court would be harmful or detrimental to the child, order that the testimony
24 of a victim or witness who is a child twelve (12) years of age or under be
25 taken outside the courtroom and the presence of the defendant and communicated
26 to the courtroom by closed-circuit television. Any such motion shall only
27 apply to the witnesses of the moving party and shall be filed no later than
28 five (5) days before the trial is scheduled to begin, except in cases where,
29 while testifying, it becomes apparent that the child cannot continue with his
30 or her testimony.

31 (b) In ruling on the motion, the court shall consider the following
32 factors:

33 (1) the age and maturity of the child;

34 (2) the possible effect that testimony in person may have on the
35 child;

36 (3) the extent of the trauma the child has already suffered;

37 (4) the nature of the testimony to be given by the child;

1 (5) the nature of the offense, including, but not limited to, the
2 use of a firearm or any other deadly weapon during the commission of the crime
3 or the infliction of serious bodily injury upon the victim during the
4 commission of the crime;

5 (6) threats made to the child or the child's family in order to
6 prevent or dissuade the child from attending or giving testimony at any trial
7 or court proceeding or to prevent the child from reporting the alleged offense
8 or from assisting in criminal prosecution. Threats under this subsection may
9 include, but not be limited to, threats of serious bodily injury to be
10 inflicted on the child or a family member, threats of incarceration or
11 deportation of the child or a family member, or threats of removal of the
12 child from the family or dissolution of the family;

13 (7) conduct on the part of the defendant or the defendant's
14 attorney which causes the child to be unable to continue his testimony; and

15 (8) any other matter which the court considers relevant.

16 (c)(1) If the court orders that the child's testimony be taken by
17 closed circuit television, the testimony shall be taken outside the courtroom
18 in the judge's chambers or in another suitable location designated by the
19 judge. Examination and cross examination of the child shall proceed as though
20 he or she were testifying in the courtroom. The only persons who may be
21 permitted in the room with the child during the child's testimony are:

22 (A) the judge or a judicial officer appointed by the court;

23 (B) the prosecutor;

24 (C) the defense attorney, except a pro se defendant;

25 (D) the child's attorney;

26 (E) persons necessary to operate the closed-circuit
27 television equipment; and

28 (F) any person whose presence is determined by the court to
29 be necessary to the welfare and well-being of the child.

30 (2) The defendant shall be afforded a means of private,
31 contemporaneous communication with the defendant's attorney during the
32 testimony.

33 (d) This act does not preclude the presence of both the victim and the
34 defendant in the courtroom together for purposes of establishing or
35 challenging the identification of the defendant when identification is a

1 legitimate issue in the proceeding.

2 (e) This act does not apply if the defendant is an attorney pro se
3 unless the defendant has a court-appointed attorney assisting the defendant in
4 the defense, in which case only the court-appointed attorney shall be
5 permitted in the room with the child during the child's testimony.

6 (f) Nothing in this act creates a right of a child witness to a closed-
7 circuit television procedure in lieu of testifying in open court and the
8 intent of this act is that testimony by closed-circuit television be used in
9 limited circumstances.

10 (g) Videotapes of closed-circuit testimony which are part of the court
11 record are subject to a protective order of the court for the purpose of
12 protecting the privacy of the alleged victim.

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14 SECTION 2. All provisions of this act of a general and permanent nature
15 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
16 Revision Commission shall incorporate the same in the Code.

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18 SECTION 3. If any provision of this act or the application thereof to
19 any person or circumstance is held invalid, such invalidity shall not affect
20 other provisions or applications of the act which can be given effect without
21 the invalid provision or application, and to this end the provisions of this
22 act are declared to be severable.

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24 SECTION 4. All laws and parts of laws in conflict with this act are
25 hereby repealed.

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/s/Pollan

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