

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

SENATE BILL 612

5 By: Senator T. Garner
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For An Act To Be Entitled

8 AN ACT PERMITTING THE REMOTE TESTIMONY OF A CHILD;
9 AND FOR OTHER PURPOSES.
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Subtitle

12 PERMITTING THE REMOTE TESTIMONY OF A
13 CHILD.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 16-43-1001 is amended to read as follows:
20 16-43-1001. Closed-circuit television and remote testimony.

21 (a)(1) In any criminal proceeding, on motion of the prosecutor after
22 notice to the defendant or on motion of the defense attorney, the court may,
23 upon a showing of clear and convincing evidence that testifying in open court
24 would be harmful or detrimental to the child, order that the testimony of a
25 victim or witness who is a child twelve (12) years of age or under be taken
26 outside the courtroom and the presence of the defendant and communicated to
27 the courtroom by closed-circuit television, video conference technology, or
28 other technology that would enable the child to testify comfortably.

29 (2) Any such motion shall only apply to the witnesses of the
30 moving party and shall be filed no later than five (5) days before the trial
31 is scheduled to begin, except in cases where, while testifying, it becomes
32 apparent that the child cannot continue with his or her testimony.

33 (b) In ruling on the motion, the court shall consider the following
34 factors:

35 (1) The age and maturity of the child;

36 (2) The possible effect that testimony in person may have on the



1 child;

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

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

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

8 (6)(A) Threats made to the child or the child's family in order
9 to prevent or dissuade the child from attending or giving testimony at any
10 trial or court proceeding or to prevent the child from reporting the alleged
11 offense or from assisting in criminal prosecution.

12 (B) Threats under this subdivision (b)(6) may include, but
13 not be limited to, threats of serious bodily injury to be inflicted on the
14 child or a family member, threats of incarceration or deportation of the
15 child or a family member, or threats of removal of the child from the family
16 or dissolution of the family;

17 (7) Conduct on the part of the defendant or the defendant's
18 attorney which causes the child to be unable to continue his or her
19 testimony; and

20 (8) Any other matter which the court considers relevant.

21 (c)(1)(A) If the court orders that the child's testimony be taken by
22 closed-circuit television, video conference technology, or other technology
23 that would enable the child to testify comfortably, the testimony shall be
24 taken outside the courtroom in the judge's chambers or in another suitable
25 location designated by the judge.

26 (B) Examination and cross-examination of the child shall
27 proceed as though he or she were testifying in the courtroom.

28 (C) The only persons who may be permitted in the room with
29 the child during the child's testimony are:

30 (i) The judge or a judicial officer appointed by the
31 court;

32 (ii) The prosecutor;

33 (iii) The defense attorney, except a pro se
34 defendant;

35 (iv) The child's attorney;

36 (v) Persons necessary to operate the closed-circuit

1 television equipment; and

2 (vi) Any person whose presence is determined by the
3 court to be necessary to the welfare and well-being of the child.

4 (2) The defendant shall be afforded a means of private,
5 contemporaneous communication with the defendant's attorney during the
6 testimony.

7 (d) This section does not preclude the presence of both the victim and
8 the defendant in the courtroom together for purposes of establishing or
9 challenging the identification of the defendant when identification is a
10 legitimate issue in the proceeding.

11 (e) This section does not apply if the defendant is an attorney pro se
12 unless the defendant has a court-appointed attorney assisting the defendant
13 in the defense, in which case only the court-appointed attorney shall be
14 permitted in the room with the child during the child's testimony.

15 (f) ~~Nothing in this~~ This section creates does not create a right of a
16 child witness to a closed-circuit television ~~procedure~~, video conference
17 technology, or other technology that would enable the child to testify
18 comfortably in lieu of testifying in open court and the intent of this
19 section is that testimony by closed-circuit television, video conference
20 technology, or other technology that would enable the child to testify
21 comfortably be used in limited circumstances.

22 (g) Videotapes of ~~closed-circuit~~ a child's testimony ~~which taken under~~
23 this section that are part of the court record are subject to a protective
24 order of the court for the purpose of protecting the privacy of the alleged
25 victim.

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27 SECTION 2. Arkansas Code § 16-43-1202 is amended to read as follows:

28 16-43-1202. Safeguards for child victims testifying in judicial and
29 administrative proceedings.

30 In order to facilitate testimony that is fair and accurate, the
31 following safeguards should be followed:

32 (1) The prosecuting attorney, victim-witness coordinator,
33 attorney ad litem, or Office of Chief Counsel attorney shall inform the child
34 about the nature of the judicial proceeding or administrative proceeding;

35 (2) The prosecuting attorney, victim-witness coordinator,
36 attorney ad litem, or Office of Chief Counsel attorney shall explain:

1 (A) The oath that will be administered to the child; and

2 (B) That the judge will determine whether the child is
3 competent to testify;

4 (3) The prosecuting attorney, victim-witness coordinator,
5 attorney ad litem, or Office of Chief Counsel attorney shall explain to the
6 child that if the child does not understand a question while testifying in
7 the judicial proceeding or administrative proceeding, the child has a right
8 to say that he or she does not understand the question;

9 (4) The prosecuting attorney, attorney ad litem, or Office of
10 Chief Counsel attorney may file a motion to have the child testify at a time
11 of day when the child is most alert and best able to understand questions
12 posed in court;

13 (5) If it is in the child's best interests, the prosecuting
14 attorney, attorney ad litem, or Office of Chief Counsel attorney may file a
15 motion for the child to have a comfort item when testifying in a judicial or
16 administrative proceeding;

17 (6) If it is in the child's best interests, the prosecuting
18 attorney, attorney ad litem, or Office of Chief Counsel attorney may file a
19 motion for the child to have a support person present when the child
20 testifies in a judicial proceeding or an administrative proceeding; ~~and~~

21 (7) The prosecuting attorney, attorney ad litem, or Office of
22 Chief Counsel attorney shall consider the effect upon the child when the
23 child is subjected to argumentative or harassing questions and shall make the
24 proper objections when appropriate to ensure that the child is not subjected
25 to argumentative or harassing questioning; and

26 (8) The prosecuting attorney, attorney ad litem, or Office of
27 Chief Counsel attorney may file a motion to have the child testify remotely
28 using closed-circuit television, video conference technology, or other
29 technology that would enable the child to testify comfortably.

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