

HOUSE BILL REPORT

SJR 8217

*As Reported By House Committee on:
Judiciary*

Brief Description: Allowing video testimony of children under ten years of age who are sexual abuse victims.

Sponsor(s): Senators Wojahn, Nelson, Rasmussen, Bauer, Bailey and McCaslin.

Brief History:

Reported by House Committee on:
Judiciary, April 5, 1991, DP.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass.* Signed by 13 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Mielke; H. Myers; Scott; D. Sommers; Tate; and Vance.

Minority Report: *Do not pass.* Signed by 5 members: Representatives Hargrove; Inslee; R. Meyers; Riley; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: In 1990, the Legislature passed a law that allows children under 10 who are alleged victims of sexual assault or physical abuse to testify at trial via closed circuit television under limited circumstances. The law was modeled after another state's statute that the United States Supreme Court has upheld as constitutional under the United States Constitution's Confrontation Clause. Washington's constitution is not identical to the United States Constitution. An issue exists whether the state Supreme Court will interpret the state constitution more narrowly than the federal constitution and invalidate the statute on state constitutional grounds.

The Sixth Amendment to the United States Constitution provides that an accused in a criminal trial has a right "to be confronted with the witnesses against him." The Washington State Constitution, article I, section 22, provides that in criminal prosecutions the accused shall

have the right "to meet the witnesses against him face to face."

The United States Supreme Court considered the issue of allowing children to testify outside the presence of the defendant and the jury in a series of cases. In one case the court held that the confrontation clause guaranteed the defendant a face-to-face meeting with the witness, interpreting the United States Constitution as the Washington constitution reads. In a later case, the court held that the confrontation clause does not guarantee a defendant the absolute right to a face-to-face meeting with witnesses at trial. The court held that the confrontation clause reflects a preference for face-to-face confrontation that may yield to exceptions. Washington cases have also held that the right to confrontation is not absolute in other contexts. However, the Washington court has not considered the constitutional validity of the closed circuit television statute.

Summary of Bill: A resolution will be submitted to the voters, which if approved will amend the Washington State constitution, article I, section 22 to provide that in criminal prosecutions involving sexual contact with a child 10 years of age or younger the court may order the testimony of the victim to be taken outside the courtroom and televised live into the courtroom.

Fiscal Note: Not requested.

Testimony For: The constitutional amendment is necessary given concerns about the constitutional validity of the statute. The families do not want their case to be the test case.

Testimony Against: Anticipating constitutional invalidation of the statute is unwise and premature. The constitutional rights of an accused person should not be contingent of the crime alleged. The topic of sexual abuse is highly charged and emotional, but the Legislature should place a limit on intervention and allows the courts to do their jobs without changing the constitution unless necessary.

Witnesses: Senator Wojahn, prime sponsor (pro); John Bumford, Thurston County Prosecutor's Office and Washington Association of Prosecuting Attorneys (pro); Mark Muenster, defense attorney and Washington Association of Criminal Defense Lawyers (con); Patricia Lautenschlager, parent of child victim (pro); Jerry Sheehan, American Civil Liberties Union (con); Dawn Larsen, Washington Coalition of Sexual Assault Programs (pro); and Ronda and Steve Henry, parents of child witnesses (pro).