

SHB 2400 - H AMD

By Representative McDonald

1 On page 21, line 14, after "2004." insert the following:

2 "Sec. 5. RCW 9A.44.150 and 1990 c 150 s 2 are each amended to
3 read as follows:

4 (1) On motion of the prosecuting attorney in a criminal
5 proceeding, the court may order that a child under the age of ten
6 may testify in a room outside the presence of the defendant and the
7 jury while one-way closed-circuit television equipment
8 simultaneously projects the child's testimony into another room so
9 the defendant and the jury can watch and hear the child testify if:

10 (a) The testimony will:

11 (i) Describe an act or attempted act of sexual contact
12 performed with or on the child witness by another ((or)) person or
13 with or on a child other than the child witness by another person;

14 (ii) Describe an act or attempted act of physical abuse against
15 the child witness by another person or against a child other than
16 the child witness by another person; or

17 (iii) Describe a violent offense as defined by RCW 9.94A.030
18 committed against a person known by or familiar to the child
19 witness or by a person known by or familiar to the child witness;

20 (b) The testimony is taken during the criminal proceeding;

21 (c) The court finds by substantial evidence, in a hearing
22 conducted outside the presence of the jury, that requiring the
23 child witness to testify in the presence of the defendant will
24 cause the child to suffer serious emotional or mental distress that
25 will prevent the child from reasonably communicating at the trial.
26 If the defendant is excluded from the presence of the child, the
27 jury must also be excluded;

28 (d) As provided in subsection (1)(a) and (b) of this section,
29 the court may allow a child witness to testify in the presence of
30 the defendant but outside the presence of the jury, via closed-

1 circuit television, if the court finds, upon motion and hearing
2 outside the presence of the jury, that the child will suffer
3 serious emotional distress that will prevent the child from
4 reasonably communicating at the trial in front of the jury, or,
5 that although the child may be able to reasonably communicate at
6 trial in front of the jury, the child will suffer serious emotional
7 or mental distress from testifying in front of the jury. If the
8 child is able to communicate in front of the defendant but not the
9 jury the defendant will remain in the room with the child while the
10 jury is excluded from the room;

11 (e) The court finds that the prosecutor has made all reasonable
12 efforts to prepare the child witness for testifying, including
13 informing the child or the child's parent or guardian about
14 community counseling services, giving court tours, and explaining
15 the trial process. If the prosecutor fails to demonstrate that
16 preparations were implemented or the prosecutor in good faith
17 attempted to implement them, the court shall deny the motion;

18 (f) The court balances the strength of the state's case without
19 the testimony of the child witness against the defendant's
20 constitutional rights and the degree of infringement of the closed-
21 circuit television procedure on those rights;

22 (g) The court finds that no less restrictive method of
23 obtaining the testimony exists that can adequately protect the
24 child witness from the serious emotional or mental distress;

25 (h) When the court allows the child witness to testify outside
26 the presence of the defendant, the defendant can communicate
27 constantly with the defense attorney by electronic transmission and
28 be granted reasonable court recesses during the child's testimony
29 for person-to-person consultation with the defense attorney;

30 (i) The court can communicate with the attorneys by an audio
31 system so that the court can rule on objections and otherwise
32 control the proceedings;

33 (j) All parties in the room with the child witness are on
34 camera and can be viewed by all other parties. If viewing all
35 participants is not possible, the court shall describe for the
36 viewers the location of the prosecutor, defense attorney, and other
37 participants in relation to the child;

1 (k) The court finds that the television equipment is capable of
2 making an accurate reproduction and the operator of the equipment
3 is competent to operate the equipment; and

4 (1) The court imposes reasonable guidelines upon the parties
5 for conducting the filming to avoid trauma to the child witness or
6 abuse of the procedure for tactical advantage.

7 The prosecutor, defense attorney, and a neutral and trained
8 victim's advocate, if any, shall always be in the room where the
9 child witness is testifying. The court in the court's discretion
10 depending on the circumstances and whether the jury or defendant or
11 both are excluded from the room where the child is testifying, may
12 remain or may not remain in the room with the child.

13 (2) During the hearing conducted under subsection (1) of this
14 section to determine whether the child witness may testify outside
15 the presence of the defendant and/or the jury, the court may
16 conduct the observation and examination of the child outside the
17 presence of the defendant if:

18 (a) The prosecutor alleges and the court concurs that the child
19 witness will be unable to testify in front of the defendant or will
20 suffer severe emotional or mental distress if forced to testify in
21 front of the defendant;

22 (b) The defendant can observe and hear the child witness by
23 closed-circuit television;

24 (c) The defendant can communicate constantly with the defense
25 attorney during the examination of the child witness by electronic
26 transmission and be granted reasonable court recesses during the
27 child's examination for person-to-person consultation with the
28 defense attorney; and

29 (d) The court finds the closed-circuit television is capable of
30 making an accurate reproduction and the operator of the equipment
31 is competent to operate the equipment. Whenever possible, all the
32 parties in the room with the child witness shall be on camera so
33 that the viewers can see all the parties. If viewing all
34 participants is not possible, then the court shall describe for the
35 viewers the location of the prosecutor, defense attorney, and other
36 participants in relation to the child.

37 (3) The court shall make particularized findings on the record
38 articulating the factors upon which the court based its decision to
39 allow the child witness to testify via closed-circuit television

1 pursuant to this section. The factors the court may consider
2 include, but are not limited to, a consideration of the child's
3 age, physical health, emotional stability, expressions by the child
4 of fear of testifying in open court or in front of the defendant,
5 the relationship of the defendant to the child, and the court's
6 observations of the child's inability to reasonably communicate in
7 front of the defendant or in open court. The court's findings
8 shall identify the impact the factors have upon the child's ability
9 to testify in front of the jury or the defendant or both and the
10 specific nature of the emotional or mental trauma the child would
11 suffer. The court shall determine whether the source of the trauma
12 is the presence of the defendant, the jury, or both, and shall
13 limit the use of the closed-circuit television accordingly.

14 (4) This section does not apply if the defendant is an attorney
15 pro se unless the defendant has a court-appointed attorney
16 assisting the defendant in the defense.

17 (5) This section may not preclude the presence of both the
18 ((victim)) child witness and the defendant in the courtroom
19 together for purposes of establishing or challenging the
20 identification of the defendant when identification is a legitimate
21 issue in the proceeding.

22 (6) The Washington supreme court may adopt rules of procedure
23 regarding closed-circuit television procedures.

24 (7) All recorded tapes of testimony produced by closed-circuit
25 television equipment shall be subject to any protective order of
26 the court for the purpose of protecting the privacy of the child
27 witness.

28 (8) Nothing in this section creates a right of the child
29 witness to a closed-circuit television procedure in lieu of
30 testifying in open court.

31 (9) The state shall bear the costs of the closed-circuit
32 television procedure.

33 (10) A child witness may or may not be a victim in the
34 proceeding."

35 Renumber the remaining sections consecutively, correct internal
36 references accordingly, and correct the title.

EFFECT: Expands the allowed use of one-way, closed-circuit television for taking the testimony of a child witness under the age of 10 outside the presence of the defendant in criminal prosecutions. Allows such testimony of a child witness to be so taken with respect to sexual contact or physical abuse against a child other than the witness. Allows such testimony of a child witness to be so taken with respect to a violent offense committed against a person known by or familiar to the child witness.