

SENATE BILL REPORT

SHB 1898

As Reported by Senate Committee On:
Law & Justice, March 31, 2015

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: Passed House: 3/02/15, 97-0.

Committee Activity: Law & Justice: 3/30/15, 3/31/15 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Aldo Melchiori (786-7439)

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 the following:

- 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

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- 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 the defendant's 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 Bill (Recommended Amendments): 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 report every-other year 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 CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): The CJTC reports to the Legislature every-other year instead of annually.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: PRO: The additional training will help law enforcement and prosecutors become aware of the possibility of child testimony outside the presence of the defendant. We need to find out if there are cases not being prosecuted because the child witness is unwilling to testify because of fear.

Persons Testifying: PRO: Representative Ortiz-Self, prime sponsor.

Persons Signed in to Testify But Not Testifying: No one.