

CHAPTER 144

CRIMINAL LAW AND PROCEDURE

SENATE BILL 96-174

BY SENATORS Martinez, Alexander, Bishop, Coffman, Johnson, Linkhart, Pascoe, L. Powers, Tebedo, Weissmann, Hernandez, and R. Powers;
also REPRESENTATIVES Adkins, Kerns, Kreutz, Leyba, Lyle, Mace, Nichol, Snyder, and Swenson.

AN ACT

CONCERNING THE USE OF CLOSED CIRCUIT TELEVISION WHEN CHILDREN TESTIFY IN SEXUAL OFFENSE TRIALS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 4 of article 3 of title 18, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

18-3-413.5. Use of closed circuit television - child victims of sexual offenses.

(1) (a) WHEN A DEFENDANT HAS BEEN CHARGED WITH AN UNLAWFUL SEXUAL OFFENSE AGAINST A CHILD, AS DEFINED IN SECTION 18-3-411 (1), AND WHEN THE VICTIM AT THE TIME OF THE TRIAL IS A CHILD LESS THAN TWELVE YEARS OF AGE, THE COURT MAY, UPON MOTION OF ANY PARTY OR UPON ITS OWN MOTION, ORDER THAT ANY TESTIMONY TAKEN OF THE CHILD VICTIM BE TAKEN IN A ROOM OTHER THAN THE COURTROOM AND BE TELEVISED BY CLOSED CIRCUIT TELEVISION IN THE COURTROOM IF:

(I) THE TESTIMONY IS TAKEN DURING THE PROCEEDING;

(II) THE JUDGE DETERMINES THAT TESTIMONY BY THE CHILD VICTIM IN THE COURTROOM AND IN THE PRESENCE OF THE DEFENDANT WOULD RESULT IN THE CHILD SUFFERING SERIOUS EMOTIONAL DISTRESS OR TRAUMA SUCH THAT THE CHILD WOULD NOT BE ABLE TO REASONABLY COMMUNICATE; AND

(III) CLOSED CIRCUIT TELEVISION EQUIPMENT IS AVAILABLE FOR SUCH USE.

(b) TO OBTAIN AN ORDER AUTHORIZING THE USE OF CLOSED CIRCUIT TELEVISION FOR TESTIMONY BY A CHILD VICTIM, THE PARTY SHALL FILE A WRITTEN MOTION WITH

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

THE COURT NO LESS THAN TEN DAYS PRIOR TO THE TRIAL.

(c) ONLY THE PROSECUTING ATTORNEY, THE ATTORNEY FOR THE DEFENDANT, THE GUARDIAN AD LITEM, IF ANY, AND THE JUDGE MAY QUESTION THE CHILD VICTIM WHEN HE OR SHE TESTIFIES BY CLOSED CIRCUIT TELEVISION.

(d) THE OPERATORS OF THE CLOSED CIRCUIT TELEVISION EQUIPMENT SHALL MAKE EVERY EFFORT TO BE UNOBTRUSIVE WHILE THE CHILD VICTIM IS TESTIFYING.

(2) (a) ONLY THE FOLLOWING PERSONS MAY BE IN THE ROOM WITH THE CHILD VICTIM WHEN THE CHILD TESTIFIES BY CLOSED CIRCUIT TELEVISION:

(I) THE PROSECUTING ATTORNEY;

(II) THE ATTORNEY FOR THE DEFENDANT;

(III) THE GUARDIAN AD LITEM, IF ANY;

(IV) THE OPERATORS OF THE CLOSED CIRCUIT TELEVISION EQUIPMENT;

(V) UNLESS THE DEFENDANT OBJECTS, ANY PERSON WHOSE PRESENCE, IN THE OPINION OF THE COURT, CONTRIBUTES TO THE WELFARE AND WELL-BEING OF THE CHILD VICTIM, INCLUDING A PERSON WHO HAS DEALT WITH THE CHILD IN A THERAPEUTIC SETTING CONCERNING THE ABUSE; AND

(VI) THE JURY.

(b) DURING THE CHILD VICTIM'S TESTIMONY BY CLOSED CIRCUIT TELEVISION, THE JUDGE AND THE DEFENDANT, IF PRESENT, SHALL REMAIN IN THE COURTROOM.

(c) THE JUDGE AND THE DEFENDANT SHALL BE ALLOWED TO COMMUNICATE WITH THE PERSONS IN THE ROOM WHERE THE CHILD IS TESTIFYING BY ANY APPROPRIATE ELECTRONIC METHOD.

(3) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF THE DEFENDANT IS APPEARING PRO SE.

(4) THIS SECTION SHALL NOT BE INTERPRETED TO PRECLUDE, FOR PURPOSES OF IDENTIFICATION OF A DEFENDANT, THE PRESENCE OF BOTH THE CHILD VICTIM AND THE DEFENDANT IN THE COURTROOM AT THE SAME TIME.

(5) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO PRECLUDE THE REMOVAL OF THE DEFENDANT, RATHER THAN THE CHILD, FROM THE COURTROOM UPON THE STIPULATION OF BOTH PARTIES AND THE APPROVAL OF THE COURT.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 2, 1996