

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 612

By: Senator T. Garner

For An Act To Be Entitled

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

Subtitle

PERMITTING THE REMOTE TESTIMONY OF A
CHILD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 16-43-1001 is amended to read as follows:
16-43-1001. Closed-circuit television and remote testimony.

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

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

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

- (1) The age and maturity of the child;
- (2) The possible effect that testimony in person may have on the



child;

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

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

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

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

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

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

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

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

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

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

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

(ii) The prosecutor;

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

(iv) The child's attorney;

(v) Persons necessary to operate the closed-circuit

television equipment; and

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

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

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

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

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

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

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

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

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

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

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

- (A) The oath that will be administered to the child; and
- (B) That the judge will determine whether the child is competent to testify;

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

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

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

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

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

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

APPROVED: 4/29/21