

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

House Bill 3338

By Delegates Green, Burkhammer, Heckert, Hornby,
Chiarelli, Mallow, Browning, Books, Marin, Leavitt,
and Pinson.

[Originating in the Committee on the Judiciary;

Reported March 18, 2025]

1 A BILL to amend and reenact §62-6B-2 and §62-6B-3 of the Code of West Virginia, 1931, as
2 amended, relating to amending the definition of "child witness", also relating to allowing
3 testimony of child witnesses by closed-circuit television in matters that allege physical,
4 sexual, or psychological abuse to the child;

Be it enacted by the Legislature of West Virginia:

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**ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND
TESTIMONY OF CHILD WITNESS.**

§62-6B-2.

Definitions.

1 For the purposes of this article, the words or terms defined in this section, and any variation
2 of those words or terms required by the context, have the meanings ascribed to them in this
3 section. These definitions are applicable unless a different meaning clearly appears from the
4 context.

5 (1) "Child witness" means a person under the age of sixteen years of age who is or will be
6 called to testify in a criminal matter concerning ~~an~~ any alleged violation of the provisions of
7 ~~sections three, four, five and seven, article eight-b, chapter sixty-one of this code in which the child~~
8 ~~is the alleged victim.~~

9 (2) "Live, closed-circuit television" means a simultaneous transmission, by closed-circuit
10 television or other electronic means, between the courtroom and the testimonial room.

11 (3) "Operator" means the individual authorized by the court to operate the closed-circuit
12 television equipment used in accordance with the provisions of this article.

13 (4) "Testimonial room" means a room within the courthouse other than the courtroom from
14 which the testimony of a child witness or the defendant is transmitted to the courtroom by means of
15 live, closed-circuit television.

(5) "Interviewed child" shall mean any person under the age of eighteen who has been interviewed by means of any type of recording equipment in connection with alleged criminal behavior or allegations of abuse or neglect of any child under the age of eighteen.

(6) "Recorded interview" means any electronic recording of the interview, and any transcript thereof, of an interviewed child conducted by: (1) An employee or representative of a child advocacy center as that term is defined in ~~section one hundred one, article three, chapter forty-nine~~ §49-3-101 of this code; (2) any psychologist, psychiatrist, physician, nurse, social worker or other person appointed by the court to interview the interviewed child as provided in ~~subsection (c), section three of this article~~ §62-6B-3(c) of this code; or (3) a child protective services worker, law-enforcement officer, prosecuting attorney or any representative of his or her office, or any other person investigating allegations of criminal behavior or behavior alleged to constitute abuse or neglect of a child.

§62-6B-3. Findings of fact required for taking testimony of child witness by closed-circuit television; considerations for court.

(a) Upon a written motion filed by the prosecuting attorney, the child's attorney or the child's guardian ad litem, and upon findings of fact determined pursuant to subsection (b) of this section, a circuit court may order that the testimony of a child witness may be taken at a pretrial proceeding or at trial through the use of live, closed-circuit television.

(b) Prior to ordering that the testimony of a child witness may be taken through the use of live, closed-circuit television, the circuit court must find by clear and convincing evidence, after conducting an evidentiary hearing on this issue, that:

(1) The child is an otherwise competent witness;

(2) That, absent the use of live, closed-circuit television the child witness will be unable to testify due solely to being required to be in the physical presence of the defendant while testifying;

(3) The child witness can only testify if live, two-way closed-circuit television is used in the trial; and

(4) That the state's ability to proceed against the defendant without the child witness' live testimony would be substantially impaired or precluded.

(c) The court shall consider the following factors in determining the necessity of allowing a child witness to testify by the use of live, closed-circuit television:

(1) The age and maturity of the child witness;

(2) The facts and circumstances of the alleged offense;

(3) The necessity of the child's live testimony to the prosecution's ability to proceed as well as any prejudice to the defendant by allowing testimony through closed-circuit television;

(4) Whether or not the facts of the case involve the alleged physical, sexual, or psychological abuse to the child witness, infliction of bodily injury to the child witness or the threat of bodily injury to the child witness, or another; and

(5) Any mental or physical handicap of the child witness.

(d) In determining whether to allow a child witness to testify through live, closed-circuit television the court shall appoint a psychiatrist or a licensed psychologist with at least five years clinical experience who shall serve as an advisor or friend of the court to provide the court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the defendant while testifying and that the child witness does not evidence signs of being subjected to undue influence or coercion. The opinion of the psychiatrist or licensed psychologist shall be filed with the circuit court at least thirty days prior to the final hearing on the use of live, closed-circuit television and the defendant shall be allowed to review the opinion and present evidence on the issue by the use of an expert or experts or otherwise

NOTE: The purpose of this bill is to govern child testimony in criminal trial in order to shield them from being intimidated by a defendant while also remaining within the parameters of the confrontation clause.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.