



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0136/1
RLR:wlj:ph

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 365**

September 30, 2009 – Offered by Representative STASKUNAS.

1 **AN ACT** *to create* 302.113 (9) (em), 302.114 (9) (dm), 304.06 (3b) and 973.10 (2r)
2 of the statutes; **relating to:** testimony of a felony victim at a probation, parole,
3 or extended supervision revocation hearing.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 302.113 (9) (em) of the statutes is created to read:
5 302.113 (9) (em) 1. If a felony victim who testified at a preliminary hearing
6 regarding the felony is subpoenaed to testify at an administrative hearing held
7 under par. (am) to determine whether a person on extended supervision violated the
8 conditions of extended supervision by committing the felony, the felony victim may
9 request that his or her testimony at the administrative hearing be taken outside the
10 presence of the person. Following such a request, if the hearing examiner determines
11 that there is a substantial likelihood that the felony victim will suffer significant
12 psychological or emotional trauma if the felony victim testifies in the presence of the

1 person or that there is a substantial likelihood that the felony victim will not be able
2 to give effective, truthful testimony in the presence of the person, the hearing
3 examiner shall, subject to subd. 2., make arrangements to take the testimony of the
4 felony victim outside the presence of the person, with opportunity for the person to
5 ask questions of the felony victim.

6 2. The hearing examiner shall give the person an opportunity on the record to
7 oppose any arrangement to have the felony victim testify outside the presence of the
8 person before the testimony is taken.

9 3. If, under this paragraph, testimony is taken outside the presence of the
10 person, the hearing examiner shall indicate on the record that the testimony of the
11 felony victim has been taken outside the presence of the person and the rationale of
12 the hearing examiner for ordering the testimony to be taken in this manner.

13 **SECTION 2.** 302.114 (9) (dm) of the statutes is created to read:

14 302.114 (9) (dm) 1. If a felony victim who testified at a preliminary hearing
15 regarding the felony is subpoenaed to testify at an administrative hearing held
16 under par. (am) to determine whether a person on extended supervision violated the
17 conditions of extended supervision by committing the felony, the felony victim may
18 request that his or her testimony at the administrative hearing be taken outside the
19 presence of the person. Following such a request, if the hearing examiner determines
20 that there is a substantial likelihood that the felony victim will suffer significant
21 psychological or emotional trauma if the felony victim testifies in the presence of the
22 person or that there is a substantial likelihood that the felony victim will not be able
23 to give effective, truthful testimony in the presence of the person, the hearing
24 examiner shall, subject to subd. 2., make arrangements to take the testimony of the

1 felony victim outside the presence of the person, with opportunity for the person to
2 ask questions of the felony victim.

3 2. The hearing examiner shall give the person an opportunity on the record to
4 oppose any arrangement to have the felony victim testify outside the presence of the
5 person before the testimony is taken.

6 3. If, under this paragraph, testimony is taken outside the presence of the
7 person, the hearing examiner shall indicate on the record that the testimony of the
8 felony victim has been taken outside the presence of the person and the rationale of
9 the hearing examiner for ordering the testimony to be taken in this manner.

10 **SECTION 3.** 304.06 (3b) of the statutes is created to read:

11 304.06 **(3b)** (a) If a felony victim who testified at a preliminary hearing
12 regarding the felony is subpoenaed to testify at an administrative hearing under sub.
13 (3) to determine whether a parolee violated a rule or condition of parole by
14 committing the felony, the felony victim may request that his or her testimony at the
15 administrative hearing be taken outside the presence of the parolee. Following such
16 a request, if the hearing examiner determines that there is a substantial likelihood
17 that the felony victim will suffer significant psychological or emotional trauma if the
18 felony victim testifies in the presence of the parolee or that there is a substantial
19 likelihood that the felony victim will not be able to give effective, truthful testimony
20 in the presence of the parolee, the hearing examiner shall, subject to par. (b), make
21 arrangements to take the testimony of the felony victim outside the presence of the
22 parolee, with opportunity for the parolee to ask questions of the felony victim.

23 (b) The hearing examiner shall give the parolee an opportunity on the record
24 to oppose any arrangement to have the felony victim testify outside the presence of
25 the parolee before the testimony is taken.

1 (c) If, under this subsection, testimony is taken outside the presence of the
2 parolee, the hearing examiner shall indicate on the record that the testimony of the
3 felony victim has been taken outside the presence of the parolee and the rationale
4 of the hearing examiner for ordering the testimony to be taken in this manner.

5 **SECTION 4.** 973.10 (2r) of the statutes is created to read:

6 973.10 (2r) (a) If a felony victim who testified at a preliminary hearing
7 regarding the felony is subpoenaed to testify at an administrative hearing under sub.
8 (2) to determine whether a probationer violated the conditions of his or her probation
9 by committing the felony, the felony victim may request that his or her testimony at
10 the administrative hearing be taken outside the presence of the probationer.
11 Following such a request, if the hearing examiner determines that there is a
12 substantial likelihood that the felony victim will suffer significant psychological or
13 emotional trauma if the felony victim testifies in the presence of the probationer or
14 that there is a substantial likelihood that the felony victim will not be able to give
15 effective, truthful testimony in the presence of the probationer, the hearing examiner
16 shall, subject to par. (b), make arrangements to take the testimony of the felony
17 victim outside the presence of the probationer, with opportunity for the probationer
18 to ask questions of the felony victim.

19 (b) The hearing examiner shall give the probationer an opportunity on the
20 record to oppose any arrangement to have the felony victim testify outside the
21 presence of the probationer before the testimony is taken.

22 (c) If, under this subsection, testimony is taken outside the presence of the
23 parolee, the hearing examiner shall indicate on the record that the testimony of the
24 felony victim has been taken outside the presence of the probationer and the

1 rationale of the hearing examiner for ordering the testimony to be taken in this
2 manner.

3 **SECTION 5. Initial applicability.**

4 (1) This act first applies to administrative hearings that are held on the
5 effective date of this subsection.

6 (END)