



**State of Wisconsin
1997 - 1998 LEGISLATURE**

LRB-1847/1

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1997 ASSEMBLY BILL 621

November 24, 1997 - Introduced by Representatives SCHAFER, KELSO, JENSEN, SYKORA, GREEN, LADWIG, OLSEN, MUSSER, DOBYNS, BRANDEMUEHL, FREESE, GOETSCH, TURNER, F. LASEE, ALBERS, AINSWORTH, NASS, HAHN, VRAKAS, GUNDERSON, OWENS, SPRINGER, WASSERMAN and SERATTI, cosponsored by Senators FITZGERALD, A. LASEE and ROESSLER. Referred to Committee on Judiciary.

1 **AN ACT to amend** 967.04 (10); and **to create** 908.08 (5) (am) and 972.11 (2m) of
2 the statutes; **relating to:** the testimony at trial of child witnesses in certain
3 cases.

Analysis by the Legislative Reference Bureau

Current law provides a procedure for admitting a videotape statement of a child witness into evidence at a criminal trial or hearing, a juvenile fact-finding hearing or a parole or probation revocation hearing. The party who wants the videotape statement admitted into evidence must file a request to admit the statement and a judge must hold a hearing on the admissibility of the statement. A videotape statement is admissible if: 1) the trial or hearing will begin before the child's 12th birthday, or the trial or hearing will begin before the child's 16th birthday and the interests of justice warrant the admission of the videotape statement; 2) the statement is free from excision, alteration or distortion; 3) the witness was under oath; 4) the time, content and circumstances of the statement indicate it is trustworthy; and 5) admission of the statement will not unfairly surprise any party or deprive any party of a fair opportunity to meet allegations made in the statement. The factors a judge may consider in determining whether the interests of justice warrant the admission of a videotape statement of a child between the age of 12 and 16 include the child's age, level of development and physical and mental health, the child's behavior at or reaction to previous interviews, and whether the use of the videotape statement would reduce the mental or emotional strain of testifying. If a videotape statement is admitted, the party offering the statement into evidence may

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call the child to testify immediately after the videotape statement is shown. If the party offering the videotape statement does not call the child, any other party may request that the child be produced for cross-examination immediately following the showing of the videotape statement.

In addition, current law provides a procedure for taking and using a videotaped deposition of a child who is likely to be called as a witness in a criminal trial or a hearing in a criminal, juvenile, probation revocation or parole revocation case if the trial or hearing will begin before the child's 12th birthday, or if the trial or hearing will begin before the child's 16th birthday and the interests of justice warrant the taking and use of the child's deposition. The factors a judge may consider in determining whether the interests of justice warrant the taking of a videotaped deposition of a child between the age of 12 and 16 are the same as those a judge may consider in determining whether the interests of justice warrant admitting a videotape statement into evidence. Any party may request the court for the taking of a videotaped deposition, and the court must hold a hearing on the request. If a judge orders the taking of a videotaped deposition, the judge must preside at the taking of the videotape deposition and must supervise and arrange the place, time and manner of the taking of the deposition to accommodate the needs of the child. The parties to the case are present at the deposition and may question the child. A videotaped deposition is admissible without an additional hearing under the law governing the admission of videotape statements of a child witness. Finally, if a videotaped deposition is admitted into evidence, the child may not be called as a witness at the proceeding in which it was admitted unless additional testimony by the child is required in the interest of fairness for reasons neither known nor with reasonable diligence discoverable at the time of the deposition by the party seeking to call the child.

This bill allows a court to take the testimony of any child witness in a criminal trial using closed-circuit audiovisual equipment if: 1) the court finds that such a procedure is necessary both to minimize the trauma to the child of testifying in the courtroom setting and to provide a setting more amenable to securing the child's uninhibited, truthful testimony; and 2) the child is either under the age of 12 at the time the trial begins or the child is under the age of 16 and the interests of justice warrant the taking of the child's testimony using closed-circuit audiovisual equipment. The bill specifies the factors a judge may consider in determining whether the interest of justice warrant the taking of the testimony of a child between the age of 12 and 16; the factors specified in the bill include most of the same factors that a judge may consider in determining whether the interests of justice warrant admitting a videotape statement or videotaped deposition into evidence.

Under the bill, the testimony of the child is taken in a room other than the courtroom and simultaneously televised in the courtroom using closed-circuit audiovisual equipment. If the court orders the taking of a child's testimony using closed-circuit audiovisual equipment, the only persons who may be present during the child's testimony are the following: 1) the judge; 2) the defendant; 3) the attorneys for the defendant and the prosecution; 4) the persons necessary to operate the audiovisual equipment; and 5) any person whose presence would contribute to

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the welfare and well-being of the child. In addition, however, the bill allows a court either to exclude the defendant from the room in which a child is testifying or to arrange the room so that the child is prevented from seeing or hearing the defendant if, after a hearing, the court finds that the presence of the defendant will result in the child suffering serious emotional distress such that the child cannot reasonably communicate. The bill also specifies things that a court must do to minimize the stress of testifying for the child, including providing a room that provides adequate privacy, freedom from distractions, informality and comfort and ordering a recess when the energy, comfort or attention span of the child or other circumstances warrant a recess.

Finally, under the bill, the testimony of a child witness may be taken by closed-circuit audiovisual equipment in a criminal trial even if the child is testifying after the showing of a videotape statement or videotaped deposition of the child.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 908.08 (5) (am) of the statutes is created to read:

2 908.08 (5) (am) The testimony of a child under par. (a) may be taken in
3 accordance with s. 972.11 (2m), if applicable.

4 **SECTION 2.** 967.04 (10) of the statutes is amended to read:

5 967.04 (10) If a court or hearing examiner admits a videotaped deposition into
6 evidence under sub. (9), the child may not be called as a witness at the proceeding
7 in which it was admitted unless the court or hearing examiner so orders upon a
8 showing that additional testimony by the child is required in the interest of fairness
9 for reasons neither known nor with reasonable diligence discoverable at the time of
10 the deposition by the party seeking to call the child. The testimony of a child who
11 is required to testify under this subsection may be taken in accordance with s. 972.11
12 (2m), if applicable.

13 **SECTION 3.** 972.11 (2m) of the statutes is created to read:

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1 972.11 **(2m)** (a) At a trial in any criminal prosecution, the court may, on its own
2 motion or on the motion of any party, order that the testimony of any child witness
3 be taken in a room other than the courtroom and simultaneously televised in the
4 courtroom by means of closed-circuit audiovisual equipment if all of the following
5 apply:

6 1. The court finds that such a procedure is necessary to minimize the trauma
7 to the child of testifying in the courtroom setting and to provide a setting more
8 amenable to securing the child witness's uninhibited, truthful testimony.

9 2. The trial in which the child may be called as a witness will commence:

10 a. Prior to the child's 12th birthday; or

11 b. Prior to the child's 16th birthday and, in addition to its finding under subd.
12 1., the court finds that the interests of justice warrant that the child's testimony be
13 taken in a room other than the courtroom and simultaneously televised in the
14 courtroom by means of closed-circuit audiovisual equipment.

15 (b) Among the factors which the court may consider in determining the
16 interests of justice under par. (a) 2. b. are any of the following:

17 1. The child's chronological age, level of development and capacity to
18 comprehend the significance of the events and to verbalize about them.

19 2. The child's general physical and mental health.

20 3. Whether the events about which the child will testify constituted criminal
21 or antisocial conduct against the child or a person with whom the child had a close
22 emotional relationship and, if the conduct constituted a battery or a sexual assault,
23 its duration and the extent of physical or emotional injury thereby caused.

24 4. The child's custodial situation and the attitude of other household members
25 to the events about which the child will testify and to the underlying proceeding.

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1 5. The child's familial or emotional relationship to those involved in the
2 underlying proceeding.

3 6. The child's behavior at or reaction to previous interviews concerning the
4 events involved.

5 7. Whether the child blames himself or herself for the events involved or has
6 ever been told by any person not to disclose them; whether the child's prior reports
7 to associates or authorities of the events have been disbelieved or not acted upon; and
8 the child's subjective belief regarding what consequences to himself or herself, or
9 persons with whom the child has a close emotional relationship, will ensue from
10 providing testimony.

11 8. Whether the child manifests or has manifested symptoms associated with
12 posttraumatic stress disorder or other mental disorders, including, without
13 limitation, reexperiencing the events, fear of their repetition, withdrawal,
14 regression, guilt, anxiety, stress, nightmares, enuresis, lack of self-esteem, mood
15 changes, compulsive behaviors, school problems, delinquent or antisocial behavior,
16 phobias or changes in interpersonal relationships.

17 9. The number of separate investigative, administrative and judicial
18 proceedings at which the child's testimony may be required.

19 (bm) If a court orders the testimony of a child to be taken under par. (a), the
20 court shall do all of the following:

21 1. To the extent it is practical and subject to s. 972.10 (3), schedule the
22 testimony on a date when the child's recollection is likely to be fresh and at a time
23 of day when the child's energy and attention span are likely to be greatest.

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1 2. Provide a room for the child to testify from that provides adequate privacy,
2 freedom from distractions, informality and comfort appropriate to the child's
3 developmental level.

4 3. Order a recess whenever the energy, comfort or attention span of the child
5 or other circumstances so warrant.

6 4. Determine that the child understands that it is wrong to tell a lie and will
7 testify truthfully if the child's developmental level or verbal skills are such that
8 administration of an oath or affirmation in the usual form would be inappropriate.

9 5. Before questioning by the parties begins, attempt to place the child at ease,
10 explain to the child the purpose of the testimony and identify all persons attending.

11 6. Subject to par. (d), supervise the spatial arrangements of the room and the
12 location, movement and deportment of all persons in attendance.

13 7. Allow the child to testify while sitting on the floor, on a platform, on an
14 appropriately sized chair, or on the lap of a trusted adult, or while moving about the
15 room within range of the visual and audio recording equipment.

16 8. Subject to par. (d), bar or terminate the attendance of any person whose
17 behavior is disruptive or unduly stressful to the child.

18 (c) Only the following persons may be present in the room in which the child
19 is giving testimony under par. (a):

20 1. The judge.

21 2. The defendant, subject to par. (d).

22 3. The attorneys for the defendant and the state.

23 4. Any person necessary to operate the closed-circuit audiovisual equipment.

24 5. Any person whose presence would contribute to the welfare and well-being
25 of the child.

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1 (d) The court shall permit the defendant to observe and hear in person the
2 testimony of a child witness under par. (a) unless the court, upon its own motion or
3 the motion of any party, finds in a hearing conducted outside the presence of the jury
4 that the presence of the defendant during the taking of testimony of the child under
5 par. (a) will result in the child suffering serious emotional distress such that the child
6 cannot reasonably communicate. If the court finds that the presence of the defendant
7 during the taking of testimony of the child under par. (a) will result in the child
8 suffering serious emotional distress such that the child cannot reasonably
9 communicate, the court may order that the testimony be taken in one of the following
10 ways:

11 1. The defendant is in the room in which the child is giving testimony, is allowed
12 to see and hear in person the testimony of the child and is allowed to communicate
13 privately and conveniently with his or her attorney, but the child is prevented from
14 seeing or hearing the defendant.

15 2. The child testifies from a room other than the courtroom and is prevented
16 from seeing or hearing the defendant, and the defendant is in the courtroom, is
17 allowed to see and hear the testimony of the child from the separate room by means
18 of the video or television monitor and is allowed to communicate privately and
19 conveniently with his or her attorney.

20 (END)