

Child Witness Testimony in Court: Using Closed-Circuit Equipment



How to Apply Virginia Code
Sections 18.2-67.9 or 63.2-1521 or 16.1-252
Updated September 2004



**Virginia, like a number
of other states, has
taken steps in recent
years to reduce the
trauma experienced by
child crime victims
when they must testify
in court about what
happened to them.**

One such step is an amendment to the *Code of Virginia*, which allows child victims in criminal or civil proceedings to testify from a room outside the courtroom via two-way, closed-circuit television. (Section 18.2-67.9 or 63.2-1521) The *Code* permits this at any criminal proceeding, including a preliminary hearing, or civil proceeding involving abuse or neglect of a child if the victim is fourteen years of age or younger at the time of the offense and is sixteen years of age or under at the time of the hearing. The use of closed-circuit testimony is also applicable to a child witness who is fourteen years of age or under at the time of testimony.

The statute allows the court to order the use of closed-circuit television, at the request of the Commonwealth, the guardian *ad litem*, or the defendant, if the judge finds that the child is unavailable to testify in open court for any of the following reasons:

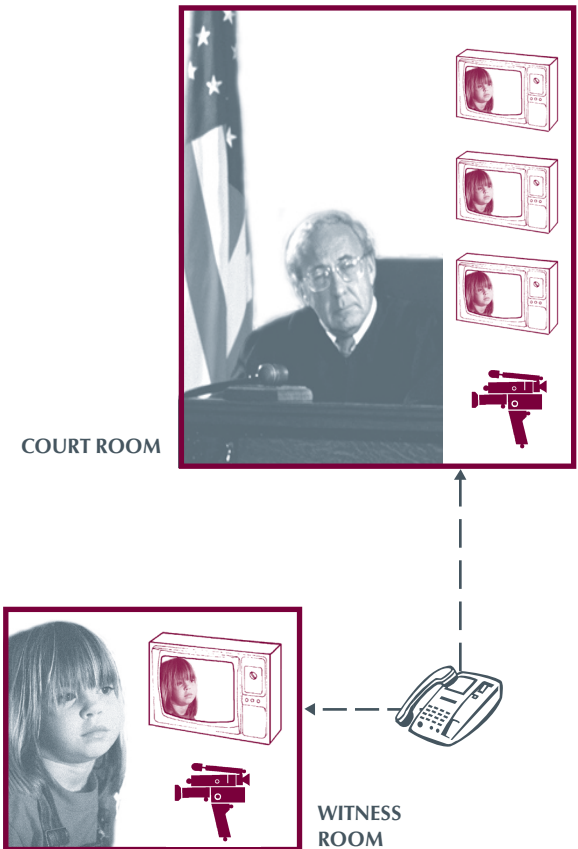
- the child refuses to testify despite the judge's request;
- the child's substantial inability to communicate about the offense; or
- there is a substantial likelihood, based on expert testimony, that the child will suffer severe emotional trauma from testifying in open court.

The law requires the court to support its ruling concerning the unavailability of the child with findings on the record or with written findings in the case of a court not of record.

The law also requires that the prosecutor and defense attorney be in the room with the child who is testifying and that the child be subject to direct and cross-examination.

Recognizing that few courts have access to the technology and expertise needed to make use of this statute when appropriate cases arise, the Department of Criminal Justice Services and the Department of State Police together purchased closed-circuit television equipment that is available to local courts on request, along with trained technicians to set up the equipment and operate it.

Questions and Answers about the use of closed-circuit television



Question: In what kinds of court cases can closed-circuit television be used?

Answer: The law (§18.2-67.9) permits the use of closed-circuit television in any criminal proceeding, including preliminary hearings, involving an alleged offense against a child relating to a violation of laws pertaining to kidnapping, criminal sexual assault, or certain family offenses. In addition, a 2001 legislative change allows children to testify by closed-circuit television in murder cases *regardless of the age of the victim*. The use of closed-circuit testimony is also permitted in civil proceedings involving abuse or neglect of a child (§63.2-1521 or §16.1-252).

Question: Are there age restrictions limiting the use of closed-circuit television?

Answer: Yes. To be eligible to use closed-circuit television, the child victim must be fourteen years of age or under at the time of the alleged offense and sixteen or under at the time of trial. A child witness who is fourteen years of age or under at the time of the testimony may also qualify for the use of closed-circuit testimony.

Question: Have there been any cases in which closed-circuit television has been used in Virginia to date?

Answer: Yes. The statute has been successfully invoked and closed-circuit testimony taken in numerous cases since the law was enacted. Between 1994 and 2003, there have been 348 requests for closed-circuit television and the equipment was actually utilized 217 times. In cases where the equipment was not actually used, almost half of the time it was because the defendant entered a guilty plea.

Question: What does “two-way” closed-circuit television mean?

Answer: It means that the child’s testimony is to be transmitted “live” to the courtroom where it can be seen and heard by the judge, jury and others as it is given and, at the same time, the proceedings in the courtroom are to be transmitted to the room where the child is, so they can be seen and heard as they occur by the child and the attorneys in the room. The diagram in this brochure illustrates graphically a typical closed-circuit setup.

Question: Who is permitted to be with the child while he or she testifies?

Answer: The statute provides that the Commonwealth's Attorney and the defendant's attorney shall be present with the child, as well as persons the court feels are necessary for the well-being and welfare of the child and those individuals necessary to operate the closed-circuit television equipment.

Question: How will the defendant communicate with his or her attorney while the attorney is out of the courtroom with the child who is testifying?

Answer: The statute requires that the defendant be provided with a means of communicating privately with his or her attorney during the testimony; and the State Police will provide communications equipment for this purpose when they set up the closed-circuit television system.

Question: How is the defendant's constitutional right to confront his or her accuser assured?

Answer: The statute provides for the defendant's attorney, as well as the prosecutor, to be with the child during his or her testimony and requires that the child be subject to direct as well as cross-examination. The defendant's constitutional right is preserved through the use of "live" closed-circuit television to allow both visual and auditory confrontation.

Question: How far in advance should these arrangements be made?

Answer: The statute requires that the party seeking the order from the court allowing the use of closed-circuit television apply for it at least seven days in advance for a criminal hearing and two days in advance for a civil hearing.

Question: What steps must be taken in order to use closed-circuit television?

Answer: The prosecution, guardian *ad litem*, or defense must ask the court for an order allowing for the use of closed-circuit television; and the requesting party should contact the State Police in writing to request the service. The State Police need as much advance notice as possible in order to schedule the equipment and technicians. First, contact the State Police at (804) 323-2027 as soon as the possibility arises that closed-circuit equipment may be needed. Follow this with a written request (a request form is available online at www.vsp.state.va.us/Forms/CCTrequest.pdf) and include a copy of the motion filed with the court to use closed-circuit testimony. The State Police will not be able to set up equipment until a decision on the motion is made.

- This service is provided at no cost to a local court on a first-come first-served basis.

Requests for this service must be submitted in writing to:

**Department of State Police
Bureau of Criminal Investigations
Criminal Intelligence Division
P.O. Box 27472
Richmond, Virginia 23261**

Requests may also be faxed to: (804) 674-2934

DO NOT submit forms via electronic mail!

- Direct questions about this service, cancellations, or rescheduling requests to: Assistant Special Agent In-Charge, Virginia State Police Technical Unit, at (804) 674-2669.

Commonwealth of Virginia

**Department of
Criminal Justice Services**



www.dcjs.virginia.gov

**Department of
State Police**



www.vsp.state.va.us

Virginia Department of Criminal Justice Services
202 North Ninth Street, 10th Floor
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