

# WEST VIRGINIA CODE: §62-6B-4

## **§62-6B-4. Procedures required for taking testimony of child witness by closed-circuit television; election of defendant; jury instruction; sanction for failure to follow procedures; additional accommodation options; recordings and confidentiality.**

(a) If the court determines that the use of live, two-way closed-circuit testimony is necessary and orders its use the defendant may, at any time prior to the child witness being called, elect to absent himself from the courtroom during the child witness' testimony. If the defendant so elects the child shall be required to testify in the courtroom.

(b)(1) If live, closed-circuit television is used in the testimony of the child witness, he or she shall be taken into the testimonial room and be televised live, by closed-circuit equipment to the view of the defendant, counsel, the court and, if applicable, the jury. The projected image of the defendant shall be visible for child witness to view if he or she chooses to do so and the view of the child witness available to those persons in the courtroom shall include a full body view. Only the prosecuting attorney, the attorney for the defendant, and the operator of the equipment may be present in the room with the child witness during testimony. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little psychological trauma as possible under the circumstances. The court shall permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. The court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(2) If the defendant elects to not be physically present in the courtroom during the testimony of the child witness, the defendant shall be taken into the testimonial room and be televised live, by two-way closed-circuit equipment to the view of the finder of fact and others present in the courtroom. The defendant shall be taken to the testimonial room prior to the appearance of the child witness in the courtroom. There shall be made and maintained a recording of the images and sounds of all proceedings which were televised pursuant to this article. While the defendant is in the testimonial room, the defendant shall be permitted to view the live, televised image of the child witness and the image of those other persons in the courtroom whom the court determines the defendant is entitled to view. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little emotional distress as possible under the circumstances. The transmission from the courtroom to the testimonial room shall be sufficient to permit the defendant to observe and hear the testimony of the child witness contemporaneous with the

taking of the testimony. No proceedings other than the taking of the testimony of the child witness shall occur while the defendant is outside the courtroom. In the event that the defendant elects that the attorney for the defendant remain in the courtroom while the defendant is in the testimonial room, the court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(c) In every case where the provisions of the article are used, the jury, at a minimum, shall be instructed, unless such instruction is waived by the defendant, that the use of live, closed-circuit television is being used solely for the child's convenience, that the use of the medium cannot as a matter of law and fact be considered as anything other than being for the convenience of the child witness and that to infer anything else would constitute a violation of the oath taken by the jurors.