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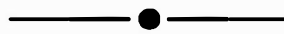
FILED

2006 APR -3 P 4: 14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

House Bill No. 4854

(By Delegates Morgan, Craig, Webster, Hamilton, Howard,
Pino, Moore, DeLong, Ellem, Long, Hrutkay)



Passed March 11, 2006

In Effect Ninety Days from Passage

FILED

2006 APR -3 P 4: 14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 4854

(BY DELEGATES MORGAN, CRAIG, WEBSTER, HAMILTON, HOWARD,
PINO, MOORE, DELONG, ELLEM, LONG, HRUTKAY)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §62-6B-3 of the Code of West Virginia, 1931, as amended, relating to allowing expert opinions of licensed psychologists with at least five years clinical experience in treatment and evaluation of children; and taking testimony of child witness through use of live two-way closed circuit television.

Be it enacted by the Legislature of West Virginia:

That §62-6B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

- 1 (a) Upon a written motion filed by the prosecuting attorney,
2 and upon findings of fact determined pursuant to subsection (b)

3 of this section, a circuit court may order that the testimony of
4 a child witness may be taken at a pretrial proceeding or at trial
5 through the use of live, two-way closed-circuit television.

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

11 (1) The child is an otherwise competent witness;

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

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

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

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

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

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

26 (3) The necessity of the child's live testimony to the
27 prosecution's ability to proceed;

28 (4) Whether or not the facts of the case involve the alleged
29 infliction of bodily injury to the child witness or the threat of
30 bodily injury to the child or another; and

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

32 (d) In determining whether to allow a child witness to
33 testify through live, two-way closed-circuit television the court
34 shall appoint a psychiatrist, licensed psychologist with at least
35 five years clinical experience or a licensed clinical social
36 worker with at least five years of significant clinical experience
37 in the treatment and evaluation of children who shall serve as
38 an advisor or friend of the court to provide the court with an
39 expert opinion as to whether, to a reasonable degree of profes-
40 sional certainty, the child witness will suffer severe emotional
41 harm, be unable to testify based solely on being in the physical
42 presence of the defendant while testifying and that the child
43 witness does not evidence signs of being subjected to undue
44 influence or coercion. The opinion of the psychiatrist, licensed
45 psychologist or licensed clinical social worker shall be filed
46 with the circuit court at least thirty days prior to the final
47 hearing on the use of live, two-way closed-circuit television and
48 the defendant shall be allowed to review the opinion and
49 present evidence on the issue by the use of an expert or experts
50 or otherwise.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



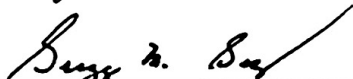
Chairman House Committee

Originating in the House.

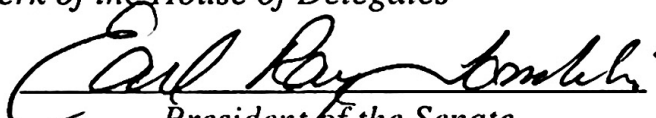
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Clerk of the Senate



Clerk of the House of Delegates

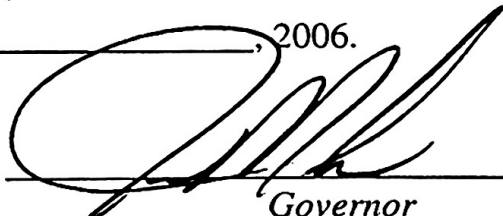


President of the Senate



Speaker of the House of Delegates

The within is approved this the 3rd
day of April, 2006.



Governor

PRESENTED TO THE
GOVERNOR

MAR 3 0 2006

Time 2:55 p