

Motions to Permit Child Witnesses to Testify Via Closed-Circuit TV

As a result of House Bill 804, O.C.G.A. § 17-8-55 has been amended to allow for children under the age of 17 to testify at trial via closed-circuit television in most sex offense cases.

Under the new statute, “child” is defined as an individual under the age of 17, as opposed to the old statute which limited it to those age 10 and under. Additionally, instead of applying in all criminal proceedings, it specifically applies when the child is a witness or an alleged victim of a violation of one of the following offenses: murder, assault, battery, kidnapping, cruelty to children, stalking, violation of a family violence order, rape, sodomy, child molestation, enticing a child for indecent purposes, pimping, pandering by compulsion, incest, sexual battery, armed robbery, or participation in criminal gang activity.

The statute provides that upon a motion from the prosecuting attorney, from the parent or guardian of the child, or on its own motion, the court “shall hold an evidentiary hearing to determine whether the child shall testify outside the physical presence of the accused. These motions must be made at least ten days prior to trial unless the court shortens that time period “for good cause.”

If the court finds by a preponderance of the evidence that testifying in the presence of the accused is likely to cause the child to suffer serious psychological or emotional distress or trauma which impairs the child’s ability to communicate, the court may order the child to testify outside the physical presence of the accused.

The statute lists several factors to consider in determining the likelihood of distress. According to the statute, the court may consider the manner of the commission of the offense, the child’s age or susceptibility to emotional distress due to a mental or physical condition, whether the accused was the parent or guardian of the child, whether the accused maintained an ongoing relationship with the child’s parent or guardian, whether the alleged offense was part of an ongoing course of conduct, whether a deadly weapon was used, or whether the accused has inflicted physical injury upon the child or expressly or impliedly

threatened to hurt the child if he or she were to report the alleged abuse.

If the court finds that emotional distress or trauma is likely, the court can issue an order requiring the child to testify outside the presence of the accused. The statute lays out several requirements for the order. It must state the method for the child's testimony, list any individuals required to be in the child's presence during the testimony, set forth any limits on the participation of those individuals during the child's testimony, and list any special conditions necessary for cross-examination. If the attorney for the accused is not allowed to be physically present during the child's testimony, then the prosecuting attorney will be excluded as well.