

Original sponsor: Swackhammer

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 323 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to testimony of children in certain  
7 criminal proceedings; and providing for an effective  
8 date."  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
10 \* Section 1. PURPOSE. It is the purpose of this Act that, in providing  
11 alternative methods for taking the testimony of a child in certain criminal  
12 proceedings in which that child was the victim or is to be a witness, the  
13 legislature is acting  
14 (1) to balance the need for the victim's or witness's testimony  
15 against the right of the defendant to confront witnesses;  
16 (2) to mitigate the mental and emotional distress that may arise  
17 as the child is required to testify; and  
18 (3) to minimize possible victim harassment by limiting the  
19 opportunities for unnecessary examination of the child by the parties'  
20 counsel.  
21 \* Sec. 2. AS 12.45 is amended by adding a new section to read:  
22 Sec. 12.45.046. TESTIMONY OF CHILDREN IN CRIMINAL PROCEEDINGS.  
23 (a) In a criminal proceeding under AS 11.41 involving the prosecution  
24 of an offense committed against a child under the age of 13, or wit-  
25 nessed by a child under the age of 13, the court  
26 (1) may appoint a guardian ad litem for the child;  
27 (2) on its own motion or on the motion of the party presenting  
28 the witness or the guardian ad litem of the child, may order that the  
29 testimony of the child be taken by closed circuit television or

1 through one-way mirrors if the court determines that the testimony by  
2 the child victim or witness under normal court procedures would result  
3 in the child's inability to effectively communicate.

4 (b) In making a determination under (a)(2) of this section, the  
5 court shall consider factors it considers relevant, including

6 (1) the child's chronological age;

7 (2) the child's level of development;

8 (3) the child's general physical health;

9 (4) any physical, emotional, or psychological injury ex-  
10 perienceed by the child; and

11 (5) the mental or emotional strain that will be caused by  
12 requiring the child to testify under normal courtroom procedures.

13 (c) If the court determines under (a)(2) of this section that  
14 the testimony by the child victim or witness under normal court proce-  
15 dures would result in the child's inability to effectively communi-  
16 cate, the court may order that the testimony of the child be taken in  
17 a room other than the courtroom and be televised by closed circuit  
18 equipment in the courtroom to be viewed by the defendant, the court,  
19 and the finder of fact in the proceeding. If the court authorizes use  
20 of closed circuit televised testimony under this subsection,

21 (1) each of the following may be in the room with the child  
22 when the child testifies:

23 (A) the prosecuting attorney;

24 (B) the attorney for the defendant; and

25 (C) operators of the closed circuit television equip-  
26 ment;

27 (2) the court may, in addition to persons specified in (1)  
28 of this subsection, admit a person whose presence, in the opinion of  
29 the court, contributes to the well-being of the child.

1           (d) When a child is to testify under (c) of this section, only  
2 the court and counsel may question the child. The persons operating  
3 the equipment shall do so in as unobtrusive a manner as possible. If  
4 the defendant requests, the court shall excuse the defendant from the  
5 courtroom, shall permit the defendant to attend in another location,  
6 and shall afford the defendant a means of viewing the child's testi-  
7 mony and of communicating with the defendant's attorney throughout the  
8 proceedings. Upon request of the defendant or the defendant's attor-  
9 ney, the court shall permit a recess to allow them to confer. The  
10 court shall provide a means of communicating with the attorneys during  
11 the questioning of the child. Objections made by the attorneys to  
12 questions of a child witness may be resolved in the courtroom if the  
13 court finds it necessary.

14           (e) If the court determines under (a)(2) of this section that  
15 the testimony by the child victim or witness under normal court proce-  
16 dures would result in the child's inability to effectively communi-  
17 cate, the court may authorize the use of one-way mirrors in conjunc-  
18 tion with the taking of the child's testimony. The attorneys may pose  
19 questions to the child and have visual contact with the child during  
20 questioning, but the mirrors shall be placed to provide a physical  
21 shield so that the child does not have visual contact with the defen-  
22 dant and jurors.

23           (f) If the court does not find under (a)(2) of this section that  
24 the testimony by the child victim or witness under normal court proce-  
25 dures will result in the child's inability to effectively communicate,  
26 the court may, after taking into consideration the factors specified  
27 in (b) of this section, supervise the spatial arrangements of the  
28 courtroom and the location, movement, and deportment of all persons in  
29 attendance so as to safeguard the child from emotional harm or stress.

1        In addition to other procedures it finds appropriate, the court may  
2                (1) allow the child to testify while sitting on the floor  
3        or on an appropriately sized chair;  
4                (2) schedule the procedure in a room that provides adequate  
5        privacy, freedom from distractions, informality, and comfort appropri-  
6        ate to the child's developmental age; and  
7                (3) order a recess when the energy, comfort, or attention  
8        span of the child warrants.  
9        \* Sec. 3. AS 44.21.410(a) is amended by adding a new paragraph to read:  
10                (6) provide guardian ad litem services in proceedings under  
11        AS 12.45.046.  
12        \* Sec. 4. AS 12.45.047 and 12.45.048 are repealed.  
13        \* Sec. 5. AS 12.45.046, enacted by sec. 2 of this Act, is retroactive  
14        and applies in criminal proceedings involving the prosecution of an offense  
15        committed before the effective date of this Act.  
16        \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).