

P.L.2017, CHAPTER 205, *approved August 7, 2017*

Assembly, No. 1199 (*Third Reprint*)

1 AN ACT concerning closed circuit testimony in certain ¹[domestic
2 violence] criminal¹ cases ¹[and],¹ ²[supplementing]²
3 ¹[chapter 84A of]¹ ²[Title 2A of the New Jersey Statutes]²
4 ¹and amending P.L.1985, c.126¹ ²and P.L.1989, c.336².

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 ²[1.¹(New section)¹ Prosecutions ¹[or actions]¹ for domestic
10 violence¹, sexual assault, and certain other crimes¹; closed circuit
11 testimony by certain vulnerable witnesses and victims.

12 a. In prosecutions for a crime ¹[or offense]¹ involving
13 domestic violence ¹as defined in section 3 of P.L.1991, c.261
14 (C.2C:25-19)¹, ¹aggravated sexual assault, sexual assault,
15 aggravated criminal sexual contact, criminal sexual contact, or
16 human trafficking involving sexual activity,¹ the court may, on
17 motion and after conducting a hearing in camera, order the taking of
18 the testimony of a ¹victim or¹ witness ¹[who is under the age of 16
19 or the testimony of a victim of any age] over the age of 16¹ on
20 closed circuit television at the trial, out of the view of the jury,
21 defendant, or spectators upon making findings as provided in
22 subsection b. of this section.

23 b. An order under this section may be made only if the court
24 determines by clear and convincing evidence that there is a
25 substantial likelihood that the ¹victim or¹ witness ¹[under the age
26 of 16 or the victim]¹ would suffer severe emotional or mental
27 distress if required to testify in open court. The order shall be
28 specific as to whether the ¹victim or¹ witness ¹[under the age of 16
29 or the victim]¹ will testify outside the presence of spectators, the
30 defendant, the jury, or all of them and shall be based on specific
31 findings relating to the impact of the presence of each.

32 c. A motion seeking closed circuit testimony under subsection
33 a. of this section may be filed by:

- 34 (1) The victim or witness ¹[under the age of 16]¹ or ¹, in the
35 case of a victim or witness who is under the age of 18,¹ the victim's
36 or witness's attorney, parent or legal guardian;
37 (2) The prosecutor;
38 (3) The defendant or the defendant's counsel; or
39 (4) The trial judge on the judge's own motion.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted March 7, 2016.

²Assembly AAP committee amendments adopted April 4, 2016.

³Assembly floor amendments adopted May 26, 2016.

1 d. The defendant's counsel shall be present at the taking of
2 testimony in camera. If the defendant is not present, he and his
3 attorney shall be able to confer privately with each other during the
4 testimony by a separate audio system.

5 e. If testimony is taken on closed circuit television pursuant to
6 the provisions of this act, a stenographic recording of that testimony
7 shall also be required. A transcript of that testimony shall be
8 included in the record on appeal. The closed circuit testimony itself
9 shall not constitute part of the record on appeal except on motion
10 for good cause shown. **]**²

11
12 **[2.]** 1.² Section 1 of P.L.1985, c.126 (C.2A:84A-32.4) is
13 amended to read as follows:

14 1. a. (1)² In prosecutions for aggravated sexual assault, sexual
15 assault, aggravated criminal sexual contact, criminal sexual contact,
16 human trafficking involving sexual activity, a crime involving
17 domestic violence as defined in section 3 of P.L.1991, c.261
18 (C.2C:25-19), **[child abuse]** endangering the welfare of a child
19 pursuant to N.J.S.2C:24-4, abuse or neglect of a child pursuant to
20 R.S.9:6-3², or in any action alleging an abused or neglected child
21 under P.L.1974, c.119 (C.9:6-8.21 et seq.), the court may, on
22 motion and after conducting a hearing in camera, order the taking of
23 the testimony of a victim or witness on closed circuit television at
24 the trial, out of the view of the jury, defendant, or spectators upon
25 making findings as provided in subsection b. of this section.

26 (2) In granting such an order, the court shall assure that:

27 (a) the victim or witness will testify under oath;

28 (b) the victim or witness will submit to cross-examination by the
29 defendant's attorney; and

30 (c) the defendant, jury, and judge will be permitted to observe
31 the demeanor of the victim or witness when making testimonial
32 statements using closed circuit television.²

33 b. An order under this section may be made only if the court
34 **[finds that the** victim or witness is 16 years of age or younger
35 **and]**² determines by clear and convincing evidence that there is a
36 substantial likelihood that the victim or witness would suffer severe
37 emotional or mental distress if required to testify in **[open court]**
38 the presence of spectators, the defendant, the jury, or all of them².
39 The order shall be specific as to whether the victim or witness will
40 testify outside the presence of spectators, the defendant, the jury, or
41 all of them and shall be based on specific findings relating to the
42 impact of the presence of each.

43 c. A motion seeking closed circuit testimony under subsection
44 a. of this section may be filed by:

45 (1) The victim or witness or 2, in the case of a victim or witness
46 who is under the age of 18,² the victim's or witness's attorney,
47 parent or legal guardian;

- 1 (2) The prosecutor; ²or²
- 2 (3) The defendant or the defendant's counsel²; or
- 3 (4) The trial judge on the judge's own motion².
- 4 d. The defendant's counsel shall be present ²in the same room
- 5 as the victim or witness² at the taking of testimony ²[in camera] on
- 6 closed circuit television². ²[If the defendant is not present, he and
- 7 his] The defendant and the defendant's² attorney shall be able to
- 8 confer privately with each other during the testimony by a separate
- 9 audio system.
- 10 e. If testimony is taken on closed circuit television pursuant to
- 11 the provisions of this ²[act, a stenographic recording of that
- 12 testimony shall also be required. A typewritten transcript of that
- 13 testimony shall be included in the record on appeal. The closed
- 14 circuit testimony itself shall not constitute part of the record on
- 15 appeal except on motion for good cause shown] section, ³[all] the
- 16 video portion of the testimony shall not be recorded and shall not
- 17 constitute part of the record on appeal. All³ audio ³[and video]³
- 18 transmissions, except private conversations between the defendant
- 19 and the defendant's attorney, shall be recorded and thereafter shall
- 20 be subject to the following provisions:
- 21 (1) If the victim or witness is 18 years of age or older at the time
- 22 of the court proceedings, any recording of the audio ³[or video]³
- 23 portion of the closed circuit testimony shall constitute part of the
- 24 record on appeal, unless the court orders otherwise for good cause
- 25 shown upon motion of the parties.
- 26 (2) If the victim or witness is under the age of 18 at the time of
- 27 the court proceedings, any recording of the audio ³[or video]³
- 28 portion of the closed circuit testimony shall not constitute part of
- 29 the record on appeal and shall be deemed confidential and not
- 30 available to the public, unless the court orders otherwise for good
- 31 cause shown upon motion of the parties. In making ³[this] the³
- 32 determination ³regarding the availability of the audio portion of the
- 33 testimony³, the court shall consider potential trauma or stigma to
- 34 the victim or witness. A transcript of the audio portion of the
- 35 closed circuit testimony shall constitute part of the record on
- 36 appeal, subject to any personal identification safeguards contained
- 37 in section 1 of P.L.1989, c.336 (C.2A:82-46).
- 38 f. For purposes of this section, "closed circuit television"
- 39 means any closed-circuit, videoconferencing or other audio-visual
- 40 electronic technology capable of producing a simultaneous, one-
- 41 way broadcast from a victim or witness to a defendant in a separate
- 42 physical location. The technology shall allow for the live
- 43 observation of the victim or witness by the defendant, jury, and
- 44 judge during the course of testimony or cross-examination, while
- 45 excluding a victim or witness from directly hearing or viewing the
- 46 defendant during the proceedings².¹
- 47 (cf: P.L.2013, c.51, s.16)

1 ²2. Section 1 of P.L.1989, c.336 (C.2A:82-46) is amended to
2 read as follows:

3 1. Disclosure of identity of victims of certain crimes under age
4 18 prohibited.

5 a. In prosecutions for aggravated sexual assault, sexual assault,
6 aggravated criminal sexual contact, criminal sexual contact, human
7 trafficking involving sexual activity, a crime involving domestic
8 violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19)
9 which involves sexual activity, endangering the welfare of children
10 under N.J.S.2C:24-4, abuse or neglect of a child pursuant to
11 R.S.9:6-3, or in any action alleging an abused or neglected child
12 under P.L.1974, c.119 (C.9:6-8.21 et seq.), the name, address, and
13 identity of a victim who was under the age of 18 at the time of the
14 alleged commission of an offense shall not appear on the
15 indictment, complaint, or any other public record as defined in
16 P.L.1963, c.73 (C.47:1A-1 et seq.). In its place initials or a
17 fictitious name shall appear.

18 b. Any report, statement, photograph, court document,
19 indictment, complaint or any other public record which states the
20 name, address and identity of a victim shall be confidential and
21 unavailable to the public. Unless authorized pursuant to subsection
22 c. of this section, any person who purposefully discloses, releases or
23 otherwise makes available to the public any of the above-listed
24 documents which contain the name, address and identity of a victim
25 who was under the age of 18 at the time of the alleged commission
26 of an offense enumerated in subsection a. of this section shall be
27 guilty of a disorderly persons offense.

28 c. The information described in this **[act]** section shall remain
29 confidential and unavailable to the public unless the court, after a
30 hearing, determines that good cause exists for disclosure. The
31 hearing shall be held after notice has been made to the victim,
32 parents of victim, spouse, partner in a civil union or other person
33 legally responsible for the maintenance and care of the victim, and
34 to the person charged with the commission of the offense, counsel
35 or guardian of that person.

36 d. Nothing contained herein shall prohibit the court from
37 imposing further restrictions with regard to the disclosure of the
38 name, address, and identity of the victim when it deems it necessary
39 to prevent trauma or stigma to the victim.²

40 (cf: P.L.1989, c.336, s.1)

41

42 ¹**[2.] 3.**¹ This act shall take effect immediately.

43

44

45 Permits a victim or witness of any age to testify by closed circuit
46 television under certain circumstances in prosecutions for domestic
47 violence, sexual assault, and certain other crimes.