

2A: 84A-32.4

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A: 84A-32.4

(Children-videotape  
testimony)

LAWS OF: 1985

CHAPTER: 126

Bill No: A2454

Sponsor(s): Vainieri and others

Date Introduced: September 13, 1984

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes

Amendments during passage  
denoted by asterisks

Date of Passage: Assembly: October 18, 1984

Senate: January 31, 1985

Date of Approval: April 11, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

Case, referred to in sponsor's statement. State v. Sheppard, 197 N.J. Super 411  
(1984).

126 85  
4-11-85

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2454

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Assemblymen VAINIERI, HERMAN, Assemblywoman PERUN,  
Assemblymen LA ROCCA, RANIERI, DORIA, CUPROWSKI,  
KARCHER, BAER, SCHWARTZ and GIRGENTI

AN ACT concerning the **videotaping of the** *closed circuit* testimony of minors in certain circumstances and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. **a.** In prosecutions for aggravated sexual assault, sexual  
2 assault, aggravated criminal sexual contact, criminal sexual contact  
3 or child abuse, the court may, on motion and after conducting a  
4 hearing in camera, order the videotaping of the testimony of a  
5 victim or witness who is 16 years of age or less upon finding that  
6 there is a substantial likelihood that the victim or witness would  
7 suffer severe emotional or mental distress if required to testify in  
8 open court. The videotape of the victim's or witness' testimony  
9 may be utilized at trial in lieu of testimony in open court.

10 b. In prosecutions for aggravated sexual assault, sexual assault,  
11 aggravated criminal sexual contact, criminal sexual contact or child  
12 abuse, the court may, on motion and after conducting a hearing in  
13 camera, order the taking of the testimony of a victim or witness  
14 who is 16 years of age or less at the trial out of the view of the  
15 jury and spectators upon finding that there is a substantial likeli-  
16 hood that the victim or witness would suffer severe emotional or  
17 mental distress if required to testify in open court. The victim's  
18 or witness' testimony taken in camera pursuant to this act shall  
19 simultaneously be viewed and heard by the jury via closed-circuit  
20 television and shall be used in lieu of testimony in open court. **\***

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Assembly committee amendments adopted October 11, 1984.

\*\*—Senate committee amendments adopted December 13, 1984.

21     *\*a. In prosecutions for aggravated sexual assault, sexual assault,*  
 22 *aggravated criminal sexual contact, criminal sexual contact, or*  
 23 *child abuse, or in any action alleging an abused or neglected child*  
 24 *under P. L. 1974, c. 119 (C. 9:6-8.21 et seq.), the court may, on*  
 25 *motion and after conducting a hearing in camera, order \*\*[video*  
 26 *taping of the testimony of a witness for use at trial, or order]\*\* the*  
 27 *taking of the testimony of a witness on closed circuit television at*  
 28 *the trial, out of the view of the jury, defendant, or spectators upon*  
 29 *making findings as provided in subsection b. of this section.*

30     *b. An order under this section may be made only if the court*  
 31 *finds that the witness is 16 years of age or younger and that there*  
 32 *is a substantial likelihood that the witness would suffer severe*  
 33 *emotional or mental distress if required to testify in open court.*  
 34 *The order shall be specific as to whether the witness will testify*  
 35 *outside the presence of spectators, the defendant, the jury, or all*  
 36 *of them and shall be based on specific findings relating to the im-*  
 37 *pact of the presence of each.\**

38     *c. A motion seeking \*\*[videotaping of]\*\* \*\*closed circuit\*\**  
 39 *testimony under \*[subsections a. and b.]\* \*subsection a.\* of this*  
 39A *section may be filed by:*

- 40     (1) The victim or witness or the victim's or witness' attorney,
- 41     parent or legal guardian;
- 42     (2) The prosecutor;
- 43     (3) The defendant or the defendant's counsel; or
- 44     (4) The trial judge on the judge's own motion.

45     \*\*[d. The trial judge shall preside at the videotaping or taking of

46 testimony unless:

- 47     (1) The victim or witness is represented by a parent, legal
- 48     guardian or counsel;
- 49     (2) The representative of the victim or witness, the prosecutor
- 50     and the counsel for the defendant stipulate that the presence of the
- 51     judge may be waived; and

52     (3) The judge finds at the hearing on the motion that the

53 presence of a judge is not necessary to protect the victim or

53A witness.】\*\*

54     \*[e. The defendant's counsel shall be present at the videotaping

55 or taking of testimony in camera. The defendant shall not be

56 present at the videotaping or in camera during the taking of

57 testimony but shall, by a separate video system, be able to com-

58 municate and confer privately with his attorney.]\*

59     \*\*[\*e.]\*\* \*\*d.\*\* \*The defendant's counsel shall be present at the

60 \*\*[videotaping or]\*\* taking of testimony in camera. If the

61 *defendant is not present, he and his attorney shall be able to confer*  
62 *privately with each other during the testimony by a separate audio*  
63 *system.\**

64 *\*\*e. If testimony is taken on closed circuit television pursuant to*  
65 *the provisions of this act, a stenographic recording of that testimony*  
66 *shall also be required. A typewritten transcript of that testimony*  
67 *shall be included in the record on appeal. The closed circuit testi-*  
68 *mony itself shall not constitute part of the record on appeal except*  
69 *on motion for good cause shown.\*\**

1 2. This act shall take effect immediately.

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ASSEMBLY, No. 2454

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Assemblymen VAINIERI, HERMAN, Assemblywoman PERUN,  
Assemblymen LA ROCCA, RANIERI, DORIA, CUPROWSKI,  
KARCHER, BAER, SCHWARTZ and GIRGENTI

AN ACT concerning the videotaping of the testimony of minors in  
certain circumstances and supplementing Title 2A of the New  
Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. a. In prosecutions for aggravated sexual assault, sexual  
2 assault, aggravated criminal sexual contact, criminal sexual contact  
3 or child abuse, the court may, on motion and after conducting a  
4 hearing in camera, order the videotaping of the testimony of a  
5 victim or witness who is 16 years of age or less upon finding that  
6 there is a substantial likelihood that the victim or witness would  
7 suffer severe emotional or mental distress if required to testify in  
8 open court. The videotape of the victim's or witness' testimony  
9 may be utilized at trial in lieu of testimony in open court.

10 b. In prosecutions for aggravated sexual assault, sexual assault,  
11 aggravated criminal sexual contact, criminal sexual contact or child  
12 abuse, the court may, on motion and after conducting a hearing in  
13 camera, order the taking of the testimony of a victim or witness  
14 who is 16 years of age or less at the trial out of the view of the  
15 jury and spectators upon finding that there is a substantial likeli-  
16 hood that the victim or witness would suffer severe emotional or  
17 mental distress if required to testify in open court. The victim's  
18 or witness' testimony taken in camera pursuant to this act shall  
19 simultaneously be viewed and heard by the jury via closed-circuit  
20 television and shall be used in lieu of testimony in open court.

21 c. A motion seeking videotaping of testimony under subsections  
22 a. and b. of this section may be filed by:

23 (1) The victim or witness or the victim's or witness' attorney,  
24 parent or legal guardian;

25 (2) The prosecutor;

26 (3) The defendant or the defendant's counsel; or

27 (4) The trial judge on the judge's own motion.

28 d. The trial judge shall preside at the videotaping or taking of  
29 testimony unless:

30 (1) The victim or witness is represented by a parent, legal  
31 guardian or counsel;

32 (2) The representative of the victim or witness, the prosecutor  
33 and the counsel for the defendant stipulate that the presence of the  
34 judge may be waived; and

35 (3) The judge finds at the hearing on the motion that the  
36 presence of a judge is not necessary to protect the victim or witness.

37 e. The defendant's counsel shall be present at the videotaping or  
38 taking of testimony in camera. The defendant shall not be present  
39 at the videotaping or in camera during the taking of testimony  
40 but shall, by a separate video system, be able to communicate and  
41 confer privately with his attorney.

1 2. This act shall take effect immediately.

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#### STATEMENT

This bill would allow in prosecutions for sexual offenses and child abuse the videotaping of the testimony of a victim or a witness who is 16 years of age or younger upon a finding by the trial court that testimony in open court would cause severe emotional or mental distress to the victim or witness. The videotape would be used in lieu of testimony at the trial and thus would spare the youthful victim or witness the ordeal of repeatedly having to discuss details of the abuse or sexual assault. This bill would also allow these victims or witnesses to testify in camera and have the testimony simultaneously viewed and heard by the jury via closed-circuit television. Recently, in a case in Burlington county, the use of closed-circuit television was held to not violate a defendant's right of confrontation. The purpose for permitting the victim or witness to testify via closed-circuit television is to spare the child the experience of appearing in the immediate presence of the alleged attacker or other spectators.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2454

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STATE OF NEW JERSEY

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DATED: DECEMBER 13, 1984

In order to spare a youthful witness the ordeal or repeatedly discussing details of sexual assault or abuse, this bill as amended by the committee would allow for the taking of testimony on closed circuit television of a witness 16 years of age or younger in criminal prosecutions for sexual offenses and child abuse. The closed circuit television testimony would be used in lieu of testimony in open court.

Closed circuit television testimony could be ordered upon a finding that there is a substantial likelihood that the witness would suffer severe emotional or mental distress if required to testify. Any order permitting closed circuit television testimony would specify whether the witness will testify outside the presence of spectators, the defendant, the jury or all of them.

A motion seeking closed circuit television may be filed by the victim or his representative, the prosecution, the defense or the trial judge on his own motion.

Defense counsel must be present at the taking of testimony on closed circuit television and if the defendant is not present, he and his counsel must be able to confer privately during the testimony.

The committee amendments also delete language which would have permitted the videotaping of the testimony of a youthful witness. It was felt that the problem of having a youthful victim testifying in open court could be best handled by closed circuit testimony. It was also felt that the use of closed circuit testimony avoids some of the legal issues, for example, the right of the defendant to confront his accuser, which prior videotaping presents.

The amendments also require that a stenographic record be made of any testimony taken on closed circuit television.