



Judges' Legal Guide: Confrontation of Child Witnesses in Criminal Cases

Background and Relevant Law¹

- The United States Supreme Court held that the Confrontation Clause does not guarantee criminal defendants an “absolute right” to a face-to-face meeting with witnesses against them at trial. *Maryland v. Craig*, 497 U.S. 836 (1990).
- *The United States Supreme Court has held that methods other than a face-to-face encounter between the defendant and the witness, including closed-circuit television, may be permissible if a court makes particularized findings on the record that:*
 - The use of a method other than a face-to-face encounter furthers an important state interest (protecting child victims of physical and psychological abuse may be an important state interest; methods other than face-to-face confrontation are permissible, at least when the trauma would impair the child’s ability to communicate). *Id.* at 852-53, 857.
 - There is a case-specific necessity for the court to use means other than face-to-face confrontation to protect the child. *Id.* at 855.
 - And the method used in place of face-to-face confrontation “ensures the reliability of the evidence by subjecting it to rigorous adversarial testing.” *Id.* at 857.

Statutory Authority in Arkansas

- *Arkansas law allows some child-witnesses to testify using closed-circuit-television if the court makes specific findings that:*
 - The witness is twelve years old or younger. **Ark. Code Ann. § 16-43-1001.**
 - The prosecution gave notice to the defendant and made a motion, or the defendant made a motion. *Id.*
 - The motion was filed no later than five days before trial, or during trial if it became apparent during testimony that the child could not continue. *Id.*
 - The defendant is represented by counsel, or, if the defendant was self-represented, that he had court-appointed counsel to assist him in his defense and to be present at the child’s testimony. *Id.*
 - And there is clear and convincing evidence that testifying in open court would be harmful or detrimental to the child. *Id.*
 - The court’s findings must consider as factors:
 - The age and maturity of the child. *Id.*
 - The possible effect that testimony in person might have on the child. *Id.*
 - The extent of the trauma the child has already suffered. *Id.*
 - The nature of the testimony to be given by the child. *Id.*
 - The nature of the offense, including whether a firearm or other deadly weapon was used, or whether serious bodily harm was inflicted on the victim during the crime. *Id.*

¹ The information in this checklist applies to criminal proceedings only.



Judges' Legal Guide: Confrontation of Child Witnesses in Criminal Cases

- Threats made to the child or the child's family to prevent or dissuade the child from attending court or giving testimony, or to prevent the child from reporting the alleged offense or from assisting in criminal prosecution. This includes threats of serious bodily injury to the child or a family member, threats of incarceration or deportation of the child or a family member, or threats of removal of the child from the family or dissolution of the family. *Id.*
- Conduct by the defendant or his attorney that causes the child to be unable to continue his testimony. *Id.*
- And any other matter the court considers relevant. *Id.*
- ***The procedure for using closed-circuit television requires that:***
 - The testimony shall be taken outside of the courtroom, either in the judge's chambers or another suitable location designated by the judge. *Id.*
 - The only persons admitted into the room will be the judge or a judicial officer appointed by the court, the prosecutor, the defense attorney, the child's attorney, any person necessary to operate the closed-circuit television, and any person whose presence the court determines is necessary to the child's welfare and wellbeing. *Id.*
 - During the testimony, the defendant must have a private and contemporaneous method to communicate with his attorney. *Id.*
 - And the child may still have to be present in the courtroom with the defendant to make an identification of the defendant if that is an issue in the case. *Id.*