



## Judges' Hearing Checklist: Confrontation of Child Witnesses in Criminal Cases

<b>Federal Constitutional Requirements for Alternative Methods of Confrontation (<i>Craig</i>, 497 U.S. 836 (1990))</b>	
Required Findings	<p>When a method other than face-to-face confrontation is used, the court must make particularized findings on the record that:</p> <ul style="list-style-type: none"><li>○ The alternate method furthers an important state interest (including when abuse victims require protection or when trauma impairs the victim's ability to give testimony).</li><li>○ There is a case-specific necessity for the court to use alternate means of confrontation.</li><li>○ And the alternate method of confrontation still allows for "rigorous adversarial testing."</li></ul>
<b>Arkansas Law on Using Closed-Circuit Television for Confrontation (A.C.A. § 16-43-1001)</b>	
Required Findings	<p>Closed-circuit television (CCTV) can be used for cross-examination if:</p> <ul style="list-style-type: none"><li>○ The witness is twelve years old or younger.</li><li>○ The prosecution motions to the court and gives the defendant notice of its intent to use CCTV, or the defendant motions to the court for the use of CCTV.</li><li>○ The motion is made no later than five days before trial, or during trial after it becomes apparent that the child cannot continue testimony in court.</li><li>○ The defendant is represented by counsel, including standby counsel for a pro se defendant.</li><li>○ The court finds by clear and convincing evidence that testifying in open court would be harmful to the child, considering as factors:<ul style="list-style-type: none"><li>○ The child's age and maturity.</li><li>○ The possible effect that in-person testimony might have on the child.</li><li>○ The extent of trauma the child has already suffered.</li><li>○ The nature of the testimony to be given by the child.</li><li>○ The nature of the offense, including whether a firearm or deadly weapon was used, or whether serious bodily harm was inflicted on the victim.</li><li>○ Whether threats were made against the child or the child's family to prevent the child from giving testimony, reporting the offense, or assisting in the prosecution, including threats of serious bodily harm, incarceration, deportation, removal of the child from the home, or dissolution of the family.</li><li>○ Conduct by the defendant or the defendant's attorney that causes the child to be unable to continue testimony.</li><li>○ Or any other matters the court considers relevant.</li></ul></li></ul>
Procedure	<p>The procedure for using closed-circuit television requires that:</p> <ul style="list-style-type: none"><li>○ The testimony is taken in a suitable location outside of the courtroom.</li><li>○ The only persons in the room for the testimony will be the judge (or a judicial officer appointed by the court), the prosecutor, the defense attorney, the child's attorney, anyone necessary to operate the closed-circuit television, and any other person whose presence the court finds necessary for the child's welfare and wellbeing.</li><li>○ During testimony, the defendant must have a method to privately and contemporaneously communicate with his attorney.</li><li>○ If identification of the defendant is an issue, the court can still require the child to make the identification in the courtroom.</li></ul>